THE SUPREME COURT OF

WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE JUSTICE PULLIN

FULL BENCH

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON WEDNESDAY, 30 APRIL 2014, AT 4.13 PM

MARTIN CJ: Be seated, please. The court sits this afternoon to farewell the Honourable Justice Christopher Pullin who retires from the court today after more than 12 years of valuable service. I would like to particularly welcome today members of his Honour's family including: his wife, Sally; his daughter, Alice; his son, Timothy; his son-in-law, Malcolm; his Honour's brother-in-law and sister-in-law, Rod and Rachael, and his sister, Wendy.

I would also like to particularly welcome his Excellency, the Honourable Malcolm McCusker AC CVO QC, his Honour, Justice Michael Barker of the Federal Court of Australia, his Honour Judge Peter Martino, Chief Judge of the District Court of Western Australia, Chief Magistrate Steven Heath, and many other distinguished guests too numerous to name including former members of this and other courts.

I would also like to particularly welcome those who will address the court this afternoon being the Solicitor-General, Mr Grant Donaldson SC representing the Honourable Michael Mischin MLA, Attorney General of Western Australia who is unable to join us today, Mr Konrad de Kerloy, President of the Law Society of Western Australia, and Mr Peter Quinlan SC, President of the Western Australian Bar Association.

Justice Pullin was welcomed to the court at a ceremonial sitting on 10 September 2001. Malcolm CJ presided. He observed that during his term as Chief Justice the number of judges provided to the court had increased from 11 to 17, and, of course, that number continued to increase even further prior to Malcolm CJs retirement in early 2006. Regrettably, I can make no such claim, notwithstanding the significant expansion in the workload and jurisdiction of the court since my appointment on 1 May 2006.

Despite repeated requests I have received no advice from government on the question of whether another judge will be appointed to the court to fill the vacancy left by his Honour's retirement. If the position is not filled it will mean that the court will have one fewer judge available to discharge its important and ever expanding functions and responsibilities than were available more than nine years ago, but I digress.

This afternoon is about Justice Pullin, and his judicial colleagues, and I regret his retirement for many reasons other than the fact that it will reduce our

complement. Since September 2001 he has made an outstanding contribution to the work of the court in a variety of fields most noticeably as an inaugural member of the Court of Appeal upon which he has served since its creation on 1 February 2005.

It is, I fear, tautological to describe the work of any member of the Court of Appeal as tireless. The work of that division of the court is unrelenting and invariably challenging because the decisions of that division of the court are, for all practical purposes, final, except for the two or three cases each year in which special leave to appeal is granted by the High Court of Australia.

It is, I think, of some significance to note that the number of cases from Western Australia in which special leave is granted dropped significantly and has remained consistently low since the creation of the Court of Appeal in 2005. It is reasonable to infer that the significant decrease in the grant of special leave to appeal from this State is the consequence of an improvement in the standards of appellate judgment to which Justice Pullin has made a very significant contribution during his period of more than nine years service on the Court of Appeal.

It's also worthy of note that Justice Pullin is the second last of the Mohicans in the sense that after his retirement President McClure will be the only remaining member of the Court of Appeal appointed to serve at its commencement on 1 February 2005. My earlier comments relating to the unrelenting and challenging nature of the judicial work undertaken by permanent members of the Court of Appeal is underscored by the observation that no member of the Court of Appeal has served until the mandatory retirement age of 70, and two members of the Court of Appeal, President Steytler and Wheeler J, retired before the age of 60 albeit in each case after lengthy periods of service on the court.

The work of the Court of Appeal has an air of collegiality which may be contrasted to the work of the general division because, of course, the Court of Appeal ordinarily sits as a three member court or sometimes a two member court, whereas the judges of the general division almost always sit alone. I am pleased to report that the aura of collegiality is not superficial, and there is a genuine bond of collegiality amongst the members of the Court of Appeal to which Justice Pullin has contributed significantly, however, the collegial aspect of the work of the court is accompanied by interminable hours of work done alone in chambers and at home pouring over appeal books,

transcripts, exhibits, written submissions, and previous cases.

Apart from occasional interaction with colleagues the work of an appellate judge borders on the monastic. A brief period in court for the purposes of oral argument invariably carries with it many hours of work undertaken in solitude. There are other reasons why I describe appellate work as challenging because as I've mentioned the decisions of the Court of Appeal are for all practical purposes final decisions. Their terms are poured over in fine detail not only by the litigants but also by the legal profession and the commercial community. Any slip, error or oversight is likely to come quickly to public attention.

Another challenging aspect of appellate work is that it carries with it the obligation to review the decisions of judicial colleagues and to identify any errors on the part of those colleagues. Justice Antonin Scalia of the United States Supreme Court has famously described appellate judges as, "The guys who watch the battle from the hill and when the battle is over come down from the hill and shoot the wounded."

Most of us have, of necessity, developed a thick skin as a form of protection against the public exaltation of error, but while appellate judges cannot and are not deflected from the enunciation of error by any consideration of the effect which it might have upon their judicial colleagues, we're all human beings and don't like to lose what few friendships we have remaining after a lengthy period on the bench, but looking around this room it's clear that Justice Pullin has successfully maintained his friendships both on and off the bench.

I have mentioned his Honour's conspicuous service as an inaugural member of the Court of Appeal. Mention should also be made of his Honour's service as President of the Industrial Appeal Courts since December 2009, and his membership of the Art Committee of the Court over many years. His Honour was, of course, well qualified for that role given his well justified renown as an artist, an aptitude which I'm sure will receive much greater expression and attention in your Honour's years of retirement.

As your retirement from the Art Committee will put an end to any question of conflict of interest continuing members of that committee will be able to consider commissioning a work from your Honour. Your Honour also took responsibility for all matters associated with the

remuneration and terms and conditions of employment of the judges during your time on the court. Although you were from time to time referred to as our shop steward in that context it must be said that we've never been prone to militancy or industrial action. Nevertheless, that's another hole created by your Honour's departure that will have to be filled in due course.

Perhaps a little more significant than your role as shop steward was the responsibility which you've shouldered since 2009 of managing the civil cases brought in the Court of Appeal. Some of the lawyers present may be a little surprised to learn that in about one third of those cases one or more of the parties are not legally represented. I don't mean to suggest that all self-represented litigants are troublesome but some are, and your Honour has shown great fortitude, skill and patience in managing those cases fairly and efficiently to hearing.

As there are others who are to speak this evening and every word spoken places us further away from refreshments I will now conclude my remarks by expressing on behalf of all members of the court and all the staff of the court our grateful appreciation for your Honour's outstanding contribution to the administration of justice in this State, and to express our best wishes for a long, healthy, and fruitful retirement. Mr Donaldson.

G. DONALDSON, MR: May it please the court. The Attorney General is in New Zealand but he has asked that I convey to your Honour, Justice Pullin, he has regretted being unable to attend this special and important sitting. The Attorney's absence leaves it as my sad duty on behalf of the Government of Western Australia to acknowledge your Honour's retirement and service on this Court.

Your Honour is the third longest serving judge of the Court and, of course the senior judge of the Court of Appeal, and your service as both a trial judge and since the inauguration of the Court of Appeal as a permanent appellate judge has been distinguished indeed. That said, it is oftentimes overlooked that judicial service is invariably only part of the contribution made by judges to the community and to the administration of justice. This is particularly so in your Honour's case, and in respect of your Honour's career prior to appointment to this court.

Like some who have risen to the highest ranks of the legal profession in this State, your Honour was educated in what might be considered relatively humble surrounds. I suspect that your Honour is the only judge of this court to

have been educated at Kellerberrin Junior High School, and though at least one other Murray J was, like your Honour, educated at Governor Stirling High School I am sure there are not many others from that particular institution. I am sure your Honour would wish me to add that you were in a year after Murray J.

It is often times thought that the legal profession is elitist and its members the product of privilege, but as your Honour's career shows it is possible certainly in this State to rise to the top of the profession without the benefit of patronage or undeserved advantage. As your Honour's career reminds us it has been and remains possible to go as far as one can in the profession simply with intellect, hard work and good sense. It is also well to remember that in the profession your Honour practised for many years as a solicitor at what was once Northmore Hale Davy & Leake. I can't begin to imagine what that firm is now called or what its current branding is.

Anyway, your Honour had a broad practice though by the time you went to the Bar, a recognised expertise in commercial matters, town planning and what used to be called common law. Your Honour's career at the Bar was expectedly spectacular. A highlight was your brief for the State in the first native title matter to go trial in Australia, Ward v Western Australia which, of course, went ultimately to the High Court, and your Honour will be pleased, I am sure, to know that much of your Honour's hard work in that matter was recently and spectacularly unravelled by Quinlan and me. I'm told that Quinlan is not bitter, your Honour.

In Ward your Honour led for the State at trial and at all levels of appeal, and as all who have followed and learned long native title trials are always difficult and good humour can sometimes be lost, but stories of your Honour's calm during that matter are legendary. Your Honour's unphased expression of being told in cross-examination that a kangaroo, the victim of road kill, had been hunted by traditional means has been envied.

A matter of legend was your Honour's response during on-country evidence somewhere north of the Gibb River Road to your four-wheel drive getting bogged in mud doorhandle deep. Your Honour retired to a shady tree with a chair and book while the judge, your junior and instructing solicitors dug it out. Your Honour's solicitor has been quoted many times about how character building these many painful hours of laborious and heavy digging were for her.

Your Honour's contribution to the profession prior to appointment to this court was far more than service as an outstanding practitioner. Your Honour served as President of the Western Australian Bar Association, and is one of only four Western Australians to be President of the Australian Bar Association. More important than this was your Honour's service as Chairman of the Legal Practitioner's Complaints Committee for near on 10 years prior to being appointed to this court.

Chairing this committee is undoubtedly the most difficult, most thankless, and most onerous contribution that a practitioner can make to the profession, yet its importance is unequalled. It demands that its holder be a practitioner of unique discretion, good judgment, integrity and authority, four epithets that encapsulate your Honour rather nicely with respect. Your Honour's service on this court prior to the creation of the Court of Appeal was distinguished. Your Honour's start was at one time auspicious and no doubt daunting. Your Honour's appointment followed the retirement of Kennedy J.

There is no one who would not quiver at the thought of trying to live up to that. Many had the good fortune of appearing before your Honour as a trial judge, because your Honour – and I think it was Le Miere J along with Michael Otis QC who was often serving as a Commissioner used to run what seemed like your own court down at the AXA building developing your own way of doing things and listing your own matters away from the prying eyes of Malcolm CJ and the late and lamented Sam Trullier; a lot of work done quietly and quickly in those courts.

I'm sure that many remember your Honour's unique skills at trial in handling my good and learned friend Doug Solomon when at full throttle. And I am tempted to recount one or two of my personal favourites – but I won't. My clearest recollection of your Honour as a trial judge involves an urgent application to appoint a receiver to a rather large group of companies. That matter was listed for hearing on the day that it commenced.

Your Honour was taken through trolleys-full of affidavits, all handed up at the hearing, and your Honour heard from the parties all that day. It was a Friday and we finished, as I'm sure your Honour will recall, late on Friday evening. The disposition of the matter could not wait beyond 10 o'clock the following Monday, for reasons that were no doubt spurious. The matter settled late on Sunday evening and it was impossible to let your Honour

know this before the matter was to come back before your Honour at 9 o'clock on the Monday morning.

My opponent was too fearful to attend court on Monday and so it was left to me to face the music. I digress to observe that I'm sure my opponent would not wish me to name him. It was McKerracher, as his Honour then was, and I can now tell your Honour that it was his client's fault that we didn't settle earlier. In any event, your Honour came into court at 9 o'clock on the Monday without being told that the matter had settled. Your Honour carried a lengthy set of typed reasons that obviously had not only taken your Honour all weekend to complete but had also involved your Honour's staff working for the whole of the weekend.

When I advised your Honour of the course of events your Honour simply asked whether any orders were required, and being told that none were, simply smiled, congratulated the parties on their good sense and adjourned the court. I recount this story because I vividly remember thinking at the time that one day, when I grew up, I would quite like to be like that. Your Honour's contribution as a judge of the Court of Appeal has been immense. As with all members of the Court of Appeal your Honour has carried an enormous burden.

The work of the trial division and the Court of Appeal is, of course, arduous, but from the bleachers it seems that the grind in the Court of Appeal is unrelenting and the weight of the task heavy. Your Honour's efficiency and insistence on the essential have been hallmarks of how your Honour ha gone about your business. And your Honour has been pivotal in introducing reforms designed to ensure that the court is assisted, as it should be, by clear and succinct written materials and oral submissions.

That is not to say that appearing before your Honour in the Court of Appeal has always been painless for everyone – certainly not for me – and one or two of us have got the touch-up from time to time. But I have always had the impression that your Honour has never been particularly thrilled at the sight of blood spurting from the gaping wounds of counsel; unlike Mazza J. I know of two eminent counsel from the east who have appeared before benches of the Court of Appeal on which your Honour has sat who were rather shell-shocked at the rigour, precision and clarity demanded by the court and of the preparation prior to the hearing of members of the bench.

The quality of this court and the contribution that it makes to the community is well and clearly understood by

the Government. And that the Court of Appeal has been the success that it is, that in such a short time it has attained the reputation that it has and that its judgments are read as widely and as admiringly as they are is, in a very substantial part, due to the burden which your Honour has worn.

Your release from these burdens is, I might say, your Honour, well deserved, and on behalf of the Government of Western Australia I simply thank your Honour for your many years of service on this court and service to the legal profession. Your Honour leaves the bench with the admiration and best wishes of the Government and of the profession and your Honour will be missed. May it please the court.

MARTIN CJ: Thank you, Mr Solicitor. Mr de Kerloy.

K. DE KERLOY, MR: May it please the court. Your Honour, during the time that your Honour has been on the bench your Honour has remained remarkably youthful both in outlook and in looks, notwithstanding the very considerable cares and burdens of your office. I mentioned the latter to your Honour at a recent Law Society function but your Honour cavilled with me. And that led me to think: was my mind playing tricks? Was there some way I could check whether it was?

As many people in this courtroom would know, there is a photographic gallery in the main corridor of this building containing photographs of all the judges who have sat as judges of this venerable court. The photographs are taken shortly after a judge assumes the office of judge. I was walking down that corridor recently and as I did so I took some time to study the portraits.

It is true, the weight and responsibility of office of a judge, and indeed gravity, are forces that are not kind – except in your Honour's case. Your Honour looks today not much different from your Honour's photograph. I have a theory: your Honour has either discovered the fountain of youth and has been sipping at its waters or someone has been tampering with your Honour's photograph. As your Honour is aware, I practise in the amalgam and I have the ability, and in your Honour's case I have had the privilege of instructing your Honour, of appearing against your Honour and of appearing before your Honour, and I have therefore seen some of your Honour's characteristics at quite close quarters over a number of years.

There are three characteristics of your Honour that I would wish to highlight: firstly, your Honour, as my learned friend the solicitor has mentioned, always had an extremely busy commercial practice. I remember you telling me that one of the reasons you went to the independent bar was that you could never get any of your own work done as apart from Northmore Hale Davy & Leake because there was always somebody at your door or in your office seeking your counsel or advice.

I'm not sure that that situation changed markedly when you went to the bar. My only complaint, if it could be called that, was that you were always so much in demand that it was very difficult to find a slot. You were appointed to the Court of Appeal as one of the inaugural members – not a particularly long time after your Honour was first appointed a judge. There are good reasons for both of those states of affairs. Your Honour is one of the best black letter lawyers and judges this state has produced, period.

The second characteristic I would like to mention is your Honour's imperturbability. In the face of a professional crisis, which so often happens in commercial cases, particularly large commercial cases, your Honour was and has been the epitome of calmness. I can give one example which highlights my point. In one case in which I appeared against your Honour, your Honour was instructed to appear for one of two engineering defendants.

It was an engineering design negligence case. I was acting for the plaintiff. Your Honour was instructed very late in the day - about a week or so before the trial was scheduled to commence. My client and the other engineering defendant had filed a mountain of expert evidence all pointing the finger at your Honour's client. Your Honour must have felt like Mother Hubbard. When your Honour looked into the cupboard for your client's expert report you found the cupboard to be bare. Your instructing solicitors had not obtained or filed any expert evidence.

Of course, at this late stage of the case there was no prospect of an adjournment or a settlement except on terms which required your client to pay not only the agreed very large damages but also the plaintiff's costs but also, at the insistence of the other engineering defendant their costs on a full indemnity basis. That was a step too far for Pullin QC. I would expect that many counsel, on learning this state of affairs, would have had a Fukushima-like-style meltdown. Your Honour remained calm. The trial commenced as scheduled before Murray J.

On the second day of the trial your Honour sought leave to adduce expert evidence – approximately nine months late. In support of that application your Honour handed up a summary of the expert evidence your Honour wished to lead. That summary ran for one short paragraph of no more than four or five lines. It contained one simple but very damaging point against the other engineer. Murray J had no difficulty in granting leave, notwithstanding that the counsel for the other engineering defendant was having a Fukushima-style meltdown.

In the result, that evidence helped convince Murray J to find the two defendant engineers equally liable of the very considerable damages. Your performance in that case exemplified not only the second characteristic but also the first; in short a brilliant performance. Third, throughout your professional life your Honour has been the model of civility and courtesy. Your Honour's approach demonstrates that hard-fought litigation can be conducted very successfully without rancour or personal insult. Your standard of behaviour, both as a practitioner and as a judge, is an exemplar of the best characteristics of both.

It is an example which the Society has been promoting and which it will continue to promote to its members. I have tried to think of a phrase which might best capture your Honour's traits in a pithy way. One of nature's gentlemen came to mind but it was quickly discarded. It would only tell part of the story and, in any event, the phrase is more suited to an obituary than a valediction. At wit's end I thought I would turn to my 17 year old son for some linguistic inspiration. What are the current gems floating around the schoolyard?

Fortunately your Honour will be pleased to know that the word "sick" has largely faded from the schoolyard vernacular. It seems to have been replaced with the word "hell" used, I believe, as an adjective. Thus, if something is particularly unpleasant or terrible it's "hell bad". If something is excellent it's "hell good". Using that as my inspiration I thought I might describe your Honour in the following way: "Hell smart, hell cool, hell good guy".

Finally, your Honour, on behalf of the Society might I thank your Honour for your very considerable and wonderful contribution to the legal profession. Your Honour has been a long-time member of the Law Society and served on its council. On behalf of the Society I convey two final wishes. First, I hope your Honour enjoys a long, happy and healthy retirement. Second, I hope your Honour will

continue to be involved in the workings of the legal profession, particularly as an arbitrator and a mediator.

This court's approach to case management and early resolution is not, in my view, adequately recognised or appreciated outside of those lawyers who practise in the field of commercial litigation. I was recently asked to pitch for a matter and one of the matters the party wanted me to specifically address was the court in which the litigation should be commenced. I wrote this:

> The court in which this claim should be instituted is the Supreme Court of Western Australia. This court has the most efficient case management system of all of the courts in this state, and its general philosophy is to assist the parties to achieve an early resolution of their dispute through mediation. This court provides a very fine mediation service through its registrars and sometimes its judges. There are, of course, times when their resources are stretched and cannot be made available at an appropriate time. There are other occasions when the dispute is of a type which would benefit from mediation by a retired judge, particularly a retired Court of Appeal judge.

On behalf of the Society might I urge your Honour not to completely hang up your legal spurs and to make your very considerable legal skills available in this regard. And just in case your Honour might think that you have reached the statutory age of retirement and your age is against you, might I leave you with two thoughts. Your Honour is the same age as Mick Jagger, and your Honour is considerably younger than some other members of his band. May it please the court.

MARTIN CJ: Thank you Mr De Kerloy. Mr Quinlan.

P. QUINLAN SC, MR: May it please the court. It is with great pleasure that I appear on behalf of the Western Australian Bar Association on this occasion of your Honour's retirement, to acknowledge the significant contribution that your Honour has made to this court and to the community of Western Australia. As has already been mentioned, your Honour leaves the court having served as a judge of the court for more than 12 years. I acknowledge and congratulate to your Honour's family who, I am sure, join in the celebration of your Honour's career and look forward to your Honour's retirement.

It was, however, with some trepidation that I approached the task of farewelling a judge of the Court of

Appeal. This is because of what is now practice direction 7.4 of the court with which your Honour is well familiar and which it is rumoured your Honour had a considerable hand in making. The trepidation arose, of course, because in publicly acknowledging your Honour's significant intellectual and legal talents, together with your Honour's even judicial temperament, strict adherence to that practice direction would require me to identify not only all of the evidence which supports my remarks but also all of the evidence which is against them.

Fortunately, I have not only the strictures of time impressed upon us by the Chief Justice, but I can confidently assure the court that I have the overwhelming weight of evidence behind me. As has been noted, your Honour's retirement leaves President McLure as the sole remaining member of the Court of Appeal appointed to the court since its inception. Today's sitting therefore is, as it were, one of the last of the class of 2005, to depart slightly from the Chief Justice's warrior metaphor. The association looks forward in due course to welcoming the next member of the class of 2014 to the bench of the Court of Appeal.

Your Honour came to this court direct from practice as an independent barrister, practising as a member of the Western Australian Bar Association, joining the association in March 1987, some 27 years ago. Over that time your Honour has made a significant contribution to the association both prior to and following your appointment to this court. In that regard for many years during your time at the Bar, your Honour served and worked on Bar Council including as President of the Association from 1994 to 1996, and since your appointment to the court your Honour has continued to give generously of your time in presenting papers and workshops to members of the association including presenting the module on duties to the court to newly elected members of the Association in the bar readers course.

That contribution has been greatly appreciated both by those members and by the Association as a whole. Your Honour's leadership at the Bar, however, was most conspicuous in your Honour's example, both for excellence in advocacy and legal ability and your reputation for hard work. Indeed, the qualities that your Honour demonstrated as an advocate give us some insight into the skills and approach that your Honour later brought to judicial responsibilities. By way of example, can I remember your Honour of the final appearance your Honour made as counsel

in the High Court of Australia. That was in fact in the case of Western Australia v Ward, the case referred to by my learned friend the Solicitor General in March 2001 and was, as has been remarked, a landmark decision in the area of native title.

By way of background, previous decisions of the High Court had left unresolved certain important questions concerning the nature of native title rights and interests which your Honour needed to address in argument. One of the earlier cases of the High Court had a majority borrowing from the language of Professor Kevin and Ms Susan Gray making the following somewhat opaque statement of principle, and I quote because you can't make these things up:

> Native title rights and interests must be understood as a perception of socially constituted fact comprising various assortments of artificially defined jural right.

When your Honour came, appearing before exactly the same bench, to that passage in the course of the argument, your Honour made the observation that it appeared that the Grays obviously preferred Proust to Hemmingway. Your Honour went on to submit to the court as gently as possible, as your Honour put it, that the language that had been adopted by the court was unhelpful and was in danger of over-intellectualising the area, when what was needed was simplicity. This approach, can I say with respect, provides something of a manifesto for your Honour's approach to judicial work.

Essential to the maintenance of the rule of law and public confidence in the administration of justice is that the law should be as far as possible accessible, understandable and predictable. To that end, both within court and in your Honour's judgments, your Honour's approach was always direct and succinct seeking to identify the real core of the dispute and to deal with it clearly and plainly. Your Honour always wanted to know what a case was really about and to identify the issues that were of real significance to the parties.

Your Honour was also widely regarded when practising as counsel to be a formidable cross-examiner who, often in a conversational way, could carefully expose the contradictions and weaknesses in a witness's evidence. This was a skill it must be said that your Honour did not completely abandon when you moved to the bench. Counsel appearing before your Honour could always be sure that if

there was a fatal flaw in the argument being advanced, your Honour's questioning would ultimately reveal and expose the flaw.

Even then I hasten to add, as with the High Court in Ward, your Honour also did so gently and politely, and in those cases your Honour always had the good grace to record in the subsequent judgment that counsel's concession was "properly made". Your Honour's polite judicial manner no doubt in part explains your Honour's successful maintenance of friendships referred to by the Chief Justice.

On behalf of the Bar Association can I extend our gratitude to your Honour for your contribution to the Bar, this court and the community of Western Australia. We trust that your Honour now looks forward to an enjoyable retirement with family and friends and wish you all the best in your future endeavours. May it please the court.

MARTIN CJ: Thank you, Mr Quinlan. Justice Pullin.

PULLIN J: Chief Justice, Mr Donald, Mr de Kerloy and Mr Quinlan, thank you for all that you have said. Before I came into court I became a little worried that there might be exaggeration and undue praise heaped upon me, but I have listened very carefully and I am pleased that did not happen.

Thank you all who have taken the trouble to attend court. I am honoured by the presence of his Excellency the Governor. When we were in practice, his Excellency and I were often opposed to each other in commercial cases and he was always ready to rise and refute any good point that I might make in my submissions. Today has been arranged as a unique occasion where he is not permitted to do that.

I am delighted by the presence of many of my friends, colleagues and family, particularly by the presence of my children Alice and Tim and above all by the presence of my wife Sally, who has provided support to me for over 43 years and who has over the breakfast table always been willing to offer robust criticism of any of my judgments that she reads about in the newspaper. I also thank my personal staff, my orderly Geoff Marshall, my secretarial staff and I thank the 16 intelligent young men and women who have been my associates during my time in the court. Thanks are also due to the Registrars Pam Eldred and Linda Bush and registry staff who oil the flow of the work to the court.

Reaching back into the mists of time I thank former members of Northmore Hale Davy & Leake who, to my astonishment, invited me into the firm as a partner after only 18 months working there. If I may go back then into the dark ages and thank John Gillett for taking me on as his articled clerk in 1968. He is now, I think, in his eighties, but does not look any different in age from when I first met him. When I said that recently at one of the ex-partner's meetings, one chipped and said, "Yes, he looked old in the 1960s."

I thank my colleagues at that important institution the WA Bar Association who provided friendship, who elected me president of the association and provided support during my time in office. I thank all members of the Bar and of the Law Society who appear in the Court. The Court is greatly assisted by lawyers who appear before us. A strong legal profession is vital to our work. To use the words of former Chief Justice Gleeson:

> We administer justice upon an assumption that a fair outcome is most likely to be achieved by hearing strong arguments on both sides of the case. That assumption may break down entirely when parties to litigation are inadequately represented.

Finally I wish to mention someone who is not with us today. I regret that the former Chief Justice David Malcolm was not able to attend due to ill health. David was my tutor at St George's College in the 1960s. He was my opponent in many cases in the 1970s and 1980s. He was the Chief Justice who recommended my appointment as Queens Counsel in 1988. He was Chief Justice when I was appointed to the general division of the Court in 2001. He was Chief Justice and then head of the Court of Appeal when it was created, and I was appointed to that court in 2005, so I owe David many thanks and I wish him well.

Now, there's something pleasant about the pomp and ceremony of those occasions, particularly if you're on the receiving end, but I do keep in mind that salutary maxim rooster today, feather duster tomorrow, in fact the motion to a feather duster status is not entirely new to me. When I was president of the Australian Bar Association I went to Canberra and attended a ceremonial sitting of the High Court. An usher greeted me at the door of the building. I was escorted by him into the court.

I was directed to a specially reserved seat at the front bar table where a printed placard announced my presence and the office that I held. That was my last day

as president, and the new president took over at midnight on that day. The next morning I attended a ceremony in the same court to welcome Callinan J as a new judge. No one greeted me at the door, no one showed me into the court, there was no placard and I had to fight for a seat in the back row. The question is whether there will be a place for me at the breakfast table tomorrow morning.

It has been a privilege to serve on the Court of Appeal. I have had good fortune to serve under two outstanding presidents – former President Steytler and current President McLure. Both are outstanding lawyers, both are excellent administrators. Both allocated work so there was never any complaint about the inequitable distribution of work. Both took on rather more work than was fair to them. Both brisk and efficient in the disposal of court work, one perhaps more brisk than the other.

The work of the court, as has been said by two of the speakers, relentless. Appeals rarely settle. It has been said that the work of an Appeal Court judge is like trying to towel yourself dry while still under the shower. In 2013 six permanent members of the Court of Appeal, assisted from time to time by the Chief Justice and other occasional temporary appointees, wrote 292 judgments. In the same year the High Court, which has seven members, wrote 59 judgments.

When the Court of Appeal was established, there were six permanent sitting members appointed. This replaced the old Full Court system where all members of the Supreme Court rotated into the hearing of appeals. The former Attorney General said when introducing the bill to create the Court of Appeal said that this would have the advantage of producing a greater consistency in judgments, judgments would be delivered more quickly and hearings would be shorter allowing for a principle development of the law. That implied correctly that under the old system decision-making was less consistent, judgments were produced more slowly and hearings took longer.

The reasons for creating the Court of Appeal have been justified and in my view the objectives have been achieved, but it does require the presence of all six judges at full throttle working in that court. At the moment, as the Chief Justice has said, there is no move to replace me on the Court of Appeal, so that the numbers of the members of the court will fall to five. It may be that this omission is due to pressure of work, but if the Court of Appeal is forced to work very long by rotating general division judges into the court, as it will have to do because five

cannot do all the work of the court, it will destroy the unity of the court and it is a road back to less consistency, slower delivery of judgments and longer hearings. If it is being done to save the expense of salary of a new judge it is more than a little remarkable given the next topic and the final topic to which I now turn.

A farewell is usually not the time to comment on proposed legislation but I feel it would be wrong not to make a comment on this occasion. You may have heard that there is presently a proposal that there should be legislation to restrict the discretion of sentencing judges in sentencing in relation to a range of burglary offences by requiring judges to impose mandatory minimum sentences for such offences. There seems to be some kind of interstate competition at the moment to legislate to increase sentences.

Queensland, Victoria and Western Australia seem to be the participants. In Western Australia the press release about this proposed burglary legislation stated that the legislation will provide, "The toughest penalties in Australia". The proposal seems to have been based on a limited number of examples where the sentence was said to have been too low.

By proposing legislation to deal with all cases because of just a few, sight must not be lost of the fact that the legislation requiring judges to impose mandatory minimum sentences will have two adverse consequences. First it will inevitably result in cases of serious injustice where persons who should not be imprisoned or imprisoned for a short time will be imprisoned for very long periods of time. The second is the financial cost and the questionable effect of such sentences. Laws such as these proposed will increase the prison population in a prison system which is already overstretched.

The United States jails over 700 of every 100,000 of its citizens, Australia around 130 and Japan about 50. That raises the question whether heavier sentencing laws which increases the prison rate makes for a safer place. The public will have to consider that and decide whether those figures suggest that it does. There is a bigger question about whether a few burglars gain light sentences, that being the apparent stated aim of the legislation, and it is as I have mentioned whether some people will suffer injustice by the application of such laws. It is an area where the press can play an important role in providing balanced reporting on the debate.

Now, as my role here comes to an end at midnight, if these laws are passed, it will concern my colleagues and others. People ask me what I am going to do once I hand over the keys here. Well, one thing I have done is to rent an office which can double as a studio. This will be a partial solution to what Justice Hall has said and warned Sally to expect of my retirement, namely half the income and twice the husband. I extend good wishes to all my colleagues on the court and once again thank you all for attending, and I hope all of you join us in the lobby for some drinks.

MARTIN CJ: Thank you, Justice Pullin. That concludes the formal part of today's proceedings, but as has been mentioned upon the rising of the court there will be refreshments available in the foyer and all are welcome to join us. The court will now adjourn.

AT 5.00 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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