

TRANSCRIPT OF PROCEEDINGS

**SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**

CEREMONIAL SITTING

on the occasion of the retirement of

THE HONOURABLE JUSTICE MALCOLM GRAY

CANBERRA

9.34 AM, FRIDAY, 29 JULY 2011

THE REGISTRAR: Supreme Court Ceremonial Sitting to mark the retirement of the Honourable Malcolm Gray J.

5 HIGGINS CJ: Well, welcome to everybody who's in attendance today and particularly may I welcome our guest of honour Gray J, his wife Laura and the extended Gray family, two generations thereof being present.

10 I welcome the judges who are present today, particularly we are honoured by the presence of Robert French CJ of the High Court of Australia, former judges of this court, the Honourable Jeffrey Miles and the Honourable John Gallop and the former master of this court Alan Hogan. It's a great pleasure to have them with us today along with magistrates, members of the Legislative Assembly, practitioners, staff members and of course ladies and gentlemen.

15 I acknowledge the apologies of those unable to attend this ceremonial sitting. Their Honours of the High Court, justices of the High Court otherwise and of course his Honour the chief justice, Chief Minister Katy Gallagher, Federal Attorney-General Robert McClelland, Commonwealth Solicitor-General Steven Gageler, Patrick Keane CJ of the Federal court, deputy John Fowlkes CJ and her Honour Mary Finn J of the Family Court, former judge of this court the Honourable Dr Ken Crispin who offers the inadequate excuse that he's surging in the south of France and the further additional and recent acting judges of this court.

20 Before I begin I wish to acknowledge the traditional owners of the land the Ngunnawal people before I mention, of course, his Honour Gray J who joined the ranks of this court on 12 October 2000 from South Australia and was later appointed president of the ACT Court of Appeal on 21 December 2007 following the retirement of Ken Crispin J. The only other South Australian import in this court is the resident judge that was the former chief justice Sir Richard Blackburn whose portrait of course is over there. Interestingly Sir Richard lectured Gray J at the University of Adelaide. I'll say no more about it than that.

35 As Mr Purnell said on the occasion of Gray's J appointment, "Sir Richard demonstrated that excellence in imports from South Australia were not only contained in bottles and restrained by courts." I think everyone will agree that in his time on the ACT Supreme Court Bench Gray J has only further demonstrated the accuracy of that statement. His Honour once said, "It is true that I have had a diverse background which I guess is understating it - "but I adopt the philosophy that ...(indistinct)...9.37.49 adopted. It's not really productive to look back or forward rather it is

useful to concentrate on the present.”

5 While his Honour may well be reluctant on the past or focus too much on
the future I’d like to take this opportunity to do just that. His impressive
and diverse past cannot be ignored on such an occasion. His Honour was
admitted to practice in South Australia in 1964. In 1966 he joined the
office of the Crown solicitor in South Australia and was appointed
solicitor general for the state of South Australia. During this time he was
a frequent visitor to Canberra while he represented the state of
10 South Australia before the High Court.

15 In 1982 his Honour took silk and was appointed a senior public defender
in 1986. That year he was also appointed Queens Counsel in New South
Wales, a state that is arguably reluctant to recognise talent outside their
state boundaries. Such an appointment is demonstrative of his Honour’s
talent as an advocate recognisable across borders.

20 In 1989 his Honour returned to South Australia as Chief Counsel for
South Australia Leal Aid. In 1991 he joined the National Crime
Authority. This was in his role as super hero fighting organised crime
nationally and internationally. In this role his Honour’s work involved the
use of the controversial coercive powers of the National Crime Authority
to require witnesses to answer questions and produce documents. His
activity in that respect was not reviewed by Benson J.

25 From 1995 until his appointment to this court his Honour practiced at the
private Bar in the areas of criminal, administrative, industrial, commercial
and constitutional law, a very wide portfolio. His Honour’s legal career
has been distinguished by many meaningful contributions to the
community both at a state level and nationally. His Honour served in the
30 Australian Army Legal Corps from 1978 to 1997, Dr Boss, rising to the
rank of colonel.

35 In South Australia he was the president of the South Australian Bar
Association 1998 to 2000, the chair of the State Theatre Company of South
Australia and South Australia Youth Arts Board. It’s not recorded as to
whether his Honour starred in any of their productions. Nationally he was
the vice-president of the Australian Bar Association from 1999 to 2000
and vice-president of the Arts Law Centre of Australia from 1998 to 2000.
40 His Honour has maintained an active involvement in the arts community
in Canberra and I’m sure he will continue to do so upon his retirement and
he may thereafter be persuaded to take an active role in some productions.

45 His Honour has made a significant contribution to all areas of law in the
Territory in particular substantially contributed to the development of the

ACT Human Rights Act 2004 while in its early stages. As president of the ACT Court of Appeal his Honour presided over the case of *R v Fernside*. This case was the first in which detailed consideration of the Human Rights Act 2004 was given by this court. Fernside was an appointee of the Australian Federal Police who allegedly administered capsicum spray to a prisoner. There was evidence that the prisoner was naked at the time as a result of being sprayed by another officer and splashed herself with water from the toilet bowl in a cell in order to alleviate the pain. Mr Fernside felt this evidence would be prejudicial if put before a jury and instead sought a trial by judge alone.

Section 68(b)(1) of the Supreme Court Act provides that an accused person in criminal proceedings shall be tried by judge alone if an election is made before a trial date is allocated to the accused. A trial date was fixed at a directions hearing on 9 October 2007. While Fernside had previously decided to be tried by judge alone no election was actually made before 9 October. Fernside made an application to the court seeking to vacate the trial date to revive his right to elect to be tried by judge alone. I, of course mistakenly, made such orders and gave leave to Mr Fernside to elect to be tried by judge alone considering his right to a fair trial in section 21 of the Human Rights Act would be impinged if he were statutory barred for making an election.

As I say, the Crown sought orders that this election be declared ineffective and the question before the Court of Appeal was whether section 68(b) engaged a right to a fair trial. The court observed that the right to fair trial in section 21 of the Human Rights Act comprised two elements, the body hearing the charge must be competent, independent and impartial and the hearing must be fair. The court considered that a jury is a competent, independent and impartial body for the purpose of a criminal trial and that fairness is a question of objective fact.

The court decided, concluded the right to elect for trial by judge alone is not part of the right to a fair trial under section 21 of the Human Rights Act. The court also found that section 30, the interpretive principle in the Human Rights Act, requires laws to be interpreted compatibly with human rights therefore did not need to be applied. This decision was reached after consideration of both sections 30 and 28 of the Human Rights Act 2004. Section 28 provides that human rights may be subject to reasonable limits. The court found that time limits as imposed by section 68(b) in the Supreme Court Act were reasonable limits for the purposes of section 28 of the Human Rights Act.

In the case of *Morrow Anazardad v the Australian Capital Territory* his Honour again significantly applied the Human Rights Act 2004. He

found section 18(7) of the Human Rights Act created a statutory right to compensation for unlawful arrest or detention. In that case the plaintiff's claimed false imprisonment against the ACT arising out of breaches of the ACT sentencing legislation and procedural fairness by the ACT Sentence Administration Board. When the ACT admitted liability the question that arose was whether section 18(7) and the Human Rights Act created a new statutory right to compensation. That states, "Anyone who's been unlawfully arrested or detained has the right to compensation for the arrest or detention." His Honour stated the express provision for compensation under that section did not require public law compensation when the existing remedy of false imprisonment at common law provided a sufficient remedy.

His Honour also made a significant contribution to the law of medical negligence in the case of *Radovanovic v Cutter*. The matter was brought on behalf of Lady Radovanovic who was born with cerebral palsy in 1980. Dr Cutter was the obstetrician who attended the plaintiff's mother, Sherrie Radovanovic. His Honour found that Dr Cutter had care of the patient in utero and was negligent in failing to diagnose vasa previa or placenta previa. That is a condition when the umbilical cord's inserted into the foetal membrane. The mother had profuse bleeding without pain prior to being admitted to hospital to give birth.

That was a sign of possible previa which the obstetrician was made aware of. Even if not aware it would have been negligent for the obstetrician not to have enquired of the mother or midwife or consulted hospital notes containing such information. If the obstetrician had been aware of the bleed he would have ensured that the previa condition was not present before rupturing the mother's membrane or would have taken extra care when rupturing the membrane.

Additionally the obstetrician knew the mother was a high risk patient due to past pregnancy experiences so his Honour found that Dr Cutter thus had a higher duty of care on top of his normal duty. The failure to diagnose resulted in the rupture of the mother's membrane, blood loss of the plaintiff as a foetus causing her to suffer a heart attack and subsequent cerebral palsy. His Honour held that the obstetrician's duty of care to the plaintiff and mother extended to diagnosing the previa condition. As the injuries suffered was a class of injury reasonably foreseeable his Honour awarded damages in the sum of \$8,380,660 which was then a record.

More recently on 25 March this year his Honour handed down the first murder conviction in the ACT since 1988 in the matter of *R v McDougall* finding Mr McDougall guilty of two counts of murder. In May this year the jury returned a guilty verdict in the trial of *R v Massey*, another murder

trial which his Honour presided over. As a result of these two matters in the last few weeks his Honour's time at the ACT Supreme Court has been far from slow. Instead his Honour has finished his time at the court by handing down sentences for murder. Such a crescendo ending is perhaps indicative that his Honour is not ready to slow down once he leaves this court and enters into retirement.

On and off the Bench his Honour is fondly known as the smiley judge. This name is attributed to the fact that you'd be hard pressed to find him without a smile on his face as indeed he has now. Whether in court, around chambers however that may not necessarily translate to lenient sentences, you be warned. Apart from his warm and friendly smile his Honour always patiently and willingly helps others. His staff and colleagues speak highly of him and regard him as a great mentor. His Honour is well known for his sense of humour.

While I'd like to say that all of us judges are comedic geniuses I have heard that his Honour's associates are often found entering the court trying their best to suppress laughter or cover up a chuckle as a result of a wise remark from his Honour behind the court. This is to be consonant of course with former Gallop's J kind remarks to batsmen when he was wicket keeper. Helpful advice he called it. His Honour has the ability to engage and share a joke with anyone he may come into contact with.

As for retirement I doubt his Honour will slow down and I'm sure the purchase of his newly purchased toy was not coincidental. It is a shiny grey Mercedes, obviously a grey one, and I'm sure there's many a joke to be made about that. Personally I would have preferred a red Mercedes because I hear they go faster but I'm sure Gray J would have had his own reasons for choosing that colour.

With his grand kids spread all over Australia along with his great love of travel interstate highway users should keep an eye out for a fast grey Mercedes with classical music blaring from its speakers and driven by a smiley retiree of course. On the other hand with his love cooking we may see him on our television screens trying out for Master Chef with his allegedly famous duck breast recipe.

I know I speak on behalf of everyone when I say that his Honour will be greatly missed both off and on the Bench. His warmth, patience, willingness to help and humour will be missed by us all. And on a personal level I'll miss the daily contact with a good friend and sharing a laugh with a brother.

I thank Laura and the Gray family for their ongoing support to his

Honour. Nobody can undertake this office, I have to say, without the support of an unflagging supporter and Laura has been all that and more.

5 Please join me not in saying in goodbye or farewell but best wishes for the future. I wish you both, Malcolm, you and Laura, all the best and may you enjoy all the good things retirement has to offer.

The Attorney-General, Mr Simon Corbell.

10 MR CORBELL: May it please the court. We are here today to farewell your Honour Gray J on your retirement as a justice of this honourable court and as president of the ACT Court of Appeal. I am pleased this morning to make these comments in the presence of your colleagues and
15 peers and in particular I acknowledge his Honour French CJ of the High Court, other judges of this court past and present as well as members of the Magistrates and the ACT Civil and Administrative Tribunal.

20 It is fitting today that to mark your retirement I gathered a broad spectrum of the ACT legal community including members from the Law Society and Bar Association, the Legal Aid Commission, Director of Public Prosecutions, chief solicitor for the ACT and many other distinguished guests. I'm particularly pleased of course to welcome your wife Laura and your children and grandchildren. It is fitting that they are also here today.

25 Your Honour has brought to this court valuable experience and insights and gained from an extraordinarily diverse career in the service of the law. Your career has spanned the full spectrum of the administration of justice culminating as a justice within this jurisdiction. As the chief justice has
30 mentioned you were first admitted to practice in South Australia, my home state, in 1964.

35 As a lawyer you have represented clients from all walks of life in the areas of criminal, administrative, industrial, commercial and constitutional law. You have held the esteem position of Solicitor-General for South Australia from 1979 to 1986 and it was a sign of the esteem in which you were held that you were appointed Queens Counsel both of South Australia and in New South Wales.

40 Your Honour has enjoyed a varied career as a senior public defender in New South Wales, a Crown advocate and as chief counsel of the Legal Services Commission of South Australia from 1989 to 1991. As mentioned your Honour was also a member of the National Crime Authority from 1991 to 1995 and also practiced as a barrister in both
45 South Australia and New South Wales.

5 You have of course been a resident judge of this court since 12 October 2000 and was appointed as president of the ACT Court of Appeal in December 2007 following the retirement of Crispin J. As the chief justice mentions you are known as the smiley judge because you smile in court thinking although what you are thinking about is always a matter of some conjecture. Your continual good mood adds to the ambience of your courtroom.

10 It has to be noted that you do have the distinction of being the judge who broke the drought on murder in the Territory with the conviction of Mr McDougall in a judge alone trial and most recently the decisions in relation to Massey. You have also had the distinction of being the trial judge in the ASIO trials which I won't ask you about because you probably can't tell us.

20 In addition to your work in the courtroom your Honour has worked both hard in the public eye and behind the scenes. Your Honour served as a colonel in the Australian Army Legal Corps, president of the South Australian Bar Association and vice-president of the Australian Bar Association. You have also maintained a keen eye and mind through your time as judge in the ACT by playing tennis and I am advised that you are keen supporter of the Adelaide Crows. The court will not hold that against you.

25 I am pleased to be able to acknowledge your contribution to strengthening the community through your dedication to the arts and culture, matters that contribute to a well rounded judicial officer. Your Honour was chair of the State Theatre Company of South Australia from 1978 to 1986, chair of the South Australian Arts Board, vice-president of the Arts Law Centre of Australia and you have been a member of the ACT Cultural Facilities Corporation from 2000 until 2010.

35 It would remise of me not to mention that your interest in culture also occurs at a more personal level particularly in relation to cuisine. Apparently you can be relied on to contribute to events and functions by way of providing personally made cucumber sandwiches which are, I understand, appreciated by all.

40 This is a just small part of cooking repertoire as you do much of your cooking at home. I'm told though that of course as a judge you rely on very significant and considered authorities when it comes to your cooking. You rely on these particularly in relation to your cucumber sandwiches and I'm told that on good authority that you rely on Mrs Beeton's manual of household management when it comes to these particular culinary

delights.

5 The government and the Canberra community have much to thank you for
your 11 years of dedicated service to the people of the Territory as a
justice of this honourable court and as president of the Court of Appeal. It
is a significant and important undertaking and one that you have
discharged with much honour and with much credibility. Your standing is
well known and will remain well known in this Territory and on behalf of
10 the government and the people of the ACT I wish you all the very best in
your retirement. May it please the court.

HIGGINS CJ: Thank you, Mr Attorney.

15 Vice-president of the Bar Association, Dr Boss.

DR BOSS: Your Honours I rise if I will on behalf of the Bar,
your Honour, Malcolm Forgan Gray J on the occasion of your retirement
from the ACT Supreme Court. When preparing for today I noted for the
first time that your Honour's middle name is Forgan. The mighty Google
20 provided me with the answer that Forgan is a town of some 500,000 soles
in Oklahoma and also a small civic parish of Persian Scotland.
Discounting Oklahoma I deduced that your Honour had some familiar link
to Perthshire, an auspicious an appropriate connection for one learned in
the law, as Aberfeldy in Perthshire was the chosen barony of Lord
25 McMillan.

In 1929 Lord McMillan was the standing counsel for the Commonwealth
of Australia but he is perhaps better known to lawyers throughout the
English common law world as one of the majority in
30 *Donohue v Stevenson*.

Your Honour, as has been outlined followed in the steps worn by
Sir Richard Blackburn from South Australia to the ACT Bench. You
came with an eminent career already behind you your Honour beginning
35 practice as a solicitor and indeed your Honour was a sole practitioner in
Mt Gambier. The rest, as they say, is history. Indeed your Honour has
been immortalised in the very excellent history of this honourable court
published by Thompson Writer.

40 Your Honour has been both trial judge and president of the Court of
Appeal. In 2008 the now commonwealth Solicitor General, Mr Stephen
Gageler of Senior Counsel wrote an article published in the 2008 Sydney
Law Review where he cited the observations made in relation to trial
judges in appellant in 1950 by Lord Justice Asquith. It is the function of a
45 trial judge to be quick, courteous and wrong. This does not mean that it is

the function of the Court of Appeal to be slow rude and right. That would be to usurp the function House of Lords.

5 Not content with busy and prestigious practice your Honour served with distinction as an officer in the Australian Army Reserve retiring from service in 1997 having attained the rank of colonel as the chief justice had indicated but also decorated with a Reserve Forces decoration. Colonel Gray, retired, is held in great esteem and respect by his former comrades in arms.

10 Somehow your Honour also managed to find time to put into practicable affect your love of the arts. As already mentioned chair of State Theatre Company of South Australia, South Australian Youth Arts Board, president of the arts law Centre of South Australia and whilst here on the Bench a member of the Cultural Facilities Corporation of the ACT. That
15 your Honour has a love of the arts may be inferred by your service as chairman and board memberships outlined. But what's less well known to those outside the courts is that by the soothing strains of classical music wafting gently into the corridors the observer passer by may be alerted the
20 fact that Gray J is in chambers.

Indeed there is great value in blending the arts with law. One can only image the invaluable training and preparation for the more lengthy and esoteric submissions of counsel that may be gained by attending Wagner's
25 full Ring Cycle. Perhaps it is no coincidence that the entire Ring Cycle has to date only ever successfully been performed in Australia in 1998 and 2004 in your Honour's native Adelaide.

30 In closing can I take your Honour back to Lord McMillan? He observed that courtesy and patience are essential if courts are to enjoy public confidence. We are most fortunate in this jurisdiction to have a Supreme Court Bench that adheres to the principles of courtesy and patience. In particular your Honour has always practiced those principles and led from the Bench by example.

35 Gray J, former solicitor, barrister, soldier, man of culture, compassion, courtesy and honoured justice of this honourable court, farewell.

40 May it please the court.

HIGGINS CJ: Thank you, Dr Boss.

45 Mr Athol Opas, president of the Law Society of the Australian Capital Territory.

MR OPAS: Your Honours, may it please the court. It is my pleasure today to address this Honourable court on behalf of the members of the Law Society of the Australian Capital Territory and to pay tribute to his Honour Malcolm Gray J. I acknowledge the many distinguished guests present today. I particularly extend greetings to his Honour Gray J, his wife Laura and to their children Rebecca, Sara, Anna and Toby and granddaughter, Ava, who have joined us in court today.

As Gray's J biographical details have already been well recounted particularly by ACT Attorney-General Simon Corbell and Higgins CJ I have instead directed my efforts towards uncovering the personal side of his Honour Gray J. Having made a number of vetting enquiries I can reveal the following facts about his Honour Gray J.

The first characteristic which I uncovered is that his Honour is thoroughly well liked and immensely popular as some people have already observed. Former barrister colleagues from his Honour's time at the Adelaide Bar spoke of his Honour in the fondest of terms. A former barrister colleague from Mitchell Chambers in Adelaide described Gray J as easy to get on with, very friendly and extremely well liked. She described his Honour as having a cheeky laugh and someone whom to the chambers did not want to lose.

It is also clear that his Honour is similarly fondly regarded by his Honour's judicial colleagues present today. To that I would add that his Honour is always pleasant, courteous and immensely patient with those who appear before him. This hallmark of courtesy and respect means that the daily business of court can progress as smoothly and pleasantly as possible and without unduly unsettling the nerves of those who appear before his Honour who may have already have other cause to be nervous.

The fondness with which his Honour is regarded is also shared by people with whom his Honour came into contact outside of the court. His Honour served as board member of the ACT Cultural Facilities Corporation from February 2001 to March 2010. This organisation manages historical house, the Canberra Museum and Gallery and the Canberra Theatre. We're joined today by the CEO and board chair of the Cultural Facilities Corporation and I welcome them to this court.

His Honour is regarded by the corporations board and staff with great respect and affection. His Honour is described as affable and very approachable and staff and board members felt very comfortable dealing with him. A board colleague also stated that his Honour didn't say a lot but when he had something to say it was always to the point and well worth listening too. The same board colleague also described his Honour as

having a good sense of humour, being as good fun and not at all stuffy.

5 A second characteristic is that Gray J has been a tremendous mentor to
others. I am told that during his Honour's time as a barrister at
Mitchell Chambers in Adelaide between 1995 and 2000 junior barristers
from that chamber would often telephone Gray J from court seeking
urgent advice about whatever challenge had thrown at them. Gray J
would in turn patiently and helpfully advise these newer barristers how to
10 proceed to which they were of course immensely grateful. Such was the
high level of regard by his Honour's younger barrister colleagues in
chambers his Honour was nicknamed Uncle Malcolm.

15 Similarly, one of his Honour's current judicial colleagues who I
interviewed spoke in glowing terms about how Gray J has willingly acted
as mentor in guiding that judge about how to deal with new matters with
which they were unfamiliar. His Honour has similarly given freely of his
time to the ACT Law Society including to address the Society's annual
dinner, judging the Law Society's young lawyers golden gabble speaking
20 competition and attending many other Law Society events.

25 A third characteristic is the complete and most disappointing lack of
anecdote or scuttlebutt in his Honour's past and despite my best
endeavours to find some. But perhaps this adds to the air of mystiques
around his Honour and perhaps that is in keeping with his Honour's move
the National Crime Authority in 1991 after which friends of his Honour
nicknamed him super spook.

30 I did however manage to extract from one of his Honour's former
Adelaide colleagues at least one anecdote. As a silk at the Adelaide Bar
his Honour appeared led by junior counsel in a special leave application to
the High Court. His Honour was acting for the Prostitutes Association of
South Australia. The case involved an appeal against a charge of
prostitution, then law in South Australia apparently defined the offence of
35 prostitution with reference to money having been paid and I stress paid in
the past tense for the act of prostitution. His Honour as counsel argued
that as the prostitute's clients had paid their money in advance to the
pimps and not to the prostitutes therefore it was the pimps and not the
prostitutes who were guilty of the offence of prostitution. But happily for
40 the pimps of South Australia and unfortunately for his Honour's client that
argument proved unsuccessful and special leave was granted.

45 This perhaps demonstrates a fourth characteristic of his Honour, namely a
preparedness to stand by another in the face of inevitable defeat. This is
possibly best demonstrated by his Honour's loyal following of the
Adelaide Crows football team. For that team's performance in 2011 I

offer my sincere apologies.

5 A fifth characteristic is his Honour's love of the arts as has already been well accounted. As I have previously mentioned after moving to Canberra in 2000 his Honour served for over nine years as board member of the ACT Cultural Facilities Corporation.

10 In this capacity his Honour also chaired the theatre programming sub committee of the board. His Honour's board colleagues describe his Honour as very experienced with theatre and highly enthusiastic about the performing arts. His Honour also apparently did a sterling job of selecting a premium wine range for the Canberra Theatre.

15 In addition to Gray's J love of performing arts his Honour is also an aficionado on classical music and in this regard his Honour's wife Laura describes the competition at home before herself and Gray J over radio channel selection.

20 A sixth characteristic as is already acknowledged is his Honour's love of food. I'm verily informed that his Honour is an outstanding amateur chef and that his Honour is the head chef at home. His Honour has a wide culinary repertoire which apparently includes a mean muscle soup. His Honour is meticulous in his search for the best ingredients, well organised and neat in his preparation and outstanding in the range and quality of
25 culinary delights. Perhaps it is his Honour's gastronomic genius which explains why it is Gray's J chambers in which the judges and master of the Supreme Court gather each Monday lunchtime to share takeaway from the now infamous Lemon Grass restaurant.

30 His Honour and wife Laura have much to look forward to. They have four children and nine grandchildren spread between Byron Bay, Adelaide and Sydney. His Honour is a devoted husband, father and grandfather. I'm reminded that today does not necessarily mark the retirement of Gray J but simply the closing in one chapter in his Honour's remarkable
35 career and the beginning of the next chapter. His Honour has served the Canberra community since October 2000 including as a judge of the ACT Supreme Court and president the ACT Court of Appeal. His Honour has injected himself into the Canberra community and endeared himself to Canberrans within and outside the legal profession.

40 On behalf of the ACT Law Society I extend our thanks to his Honour for all that he has done for the Canberra community. I also wish his Honour and his wife Laura all the best for the future. I also add that Gray's J birthday is on Monday for which I wish his Honour best wishes and many
45 happy returns.

May it please the court.

HIGGINS CJ: Thank you, Mr Opas.

5

That, by the way, is shared with all the thoroughbreds in Australia.

I ask Gray J whether he wishes to reply?

10

GRAY J: Higgins CJ, Attorney-General Mr Corbell, Dr Boss, vice-president of the Bar Association, Mr Opas, president of the Law Society, are you sure you're talking about the right person? It is very hard to respond to the compliments you've paid me. I feel the same way as Alexander Poe in that I have no doubt that you are complimenting me into a far better opinion of myself than I deserve however I choose to correct nothing.

15

I would wish to acknowledge all of you who've come to honour me with your presence here today. I had thought that I might avoid this occasion but I did not have the wit to take extended leave. To have done so would have denied me the pleasure of seeing you all here today.

20

I found the appointment of this court both rewarding and challenging. The fact that it has a diverse jurisdiction covering what in the courts of the Australian states would fall within the province of a District Court, as well as exercising jurisdiction as a Court of Appeal from its own decisions, has been particularly mind broadening. It has meant a very significant workload on a court comprised of only four resident judges and a master.

25

I have felt immensely privilege to have as my colleagues in my time with the court, the former Chief Justice, Geoff Miles, whom I am pleased is here today, the late Terry Connolly, who is sadly missed by all of those who knew him, the now Chief Justice, Terry Higgins, Ken Crispin, who is presently repairing the depredations made by the vendor to his south of France house, Richard Refshauge, Hillary Penfold, and the Master, David Harper. I have enjoyed their friendship, their goodwill, their assistance.

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I am particularly conscious of the help they have given to me and the collegiality that we have shared. Chief Justice, in particular I respect your leadership and the support you have given me. It is particularly gratifying to be part of a court with people who you admire and like.

40

I am pleased to see the Honourable John Gallop here today. He was kind to me when I first came and he has demonstrated that galloping off into

the sunset, as it were, is not necessarily an end to your judicial responsibilities, even 10 years later.

5 I am also greatly honoured that Chief Justice French of the High Court, a former additional judge of this court, can be here today. It is also gratifying to see Alan Hogan, former Master and acting judge, to be also present.

10 In the sitting when I was first welcomed to this court over 10 years ago, I was very conscious of the court's position in the ACT. I was also conscious of the stature that it had achieved under Sir Richard Blackburn and the judges that had preceded me. At that time, appeals to this court were to the Federal Court. Also at that time, judges of this court held dual commissions. That meant that there was no restriction on them sitting on
15 appeals from this court. When that ceased with the federal government deciding that judges appointed to this court were no longer to be appointed to the Federal Court, the Territory government created a Court of Appeal comprising the resident members of this court, with additional judges from the Federal Court.

20 It was shortly after I commenced my time here that this newly functioning Court of Appeal was created with Justice Crispin as its first president. When he retired, I succeeded him at the urging of the present Chief Justice. I am grateful to Terry Higgins for his confidence in me and I have
25 had immense satisfaction presiding over the Court of Appeal. Fortunately, the additional judges from the Federal Court, by their generous allocation of their time, have made workable a system which would not otherwise have been possible if it had been reliant upon the limited number of the court's resident judges.

30 That points up one of the special features of this Supreme Court, that is, the role that the additional judges from the Federal Court play in helping the court to deal with its workload. It means that I have had the privilege of sitting with a number of persons who I very much respect, as well as
35 being the beneficiary of their wise advice and experience. I thank them for that.

40 More recently, the court has been assisted by acting judges and my remarks extend to them as well. The acting judges were appointed to assist the court with its workload in a situation where for some time the court's judicial complement suffered from the untimely loss of Justice Terry Connolly and the retirement of Justice Ken Crispin.

45 I know that the government is placing faith in systemic changes to address the problem. Whether that faith is appropriate, we apparently will have to

wait and see. However, it is concerning to me that no short term solution is being considered until the longer term effect of those changes are evaluated. In both civil and criminal matters, the time for matters to be heard is still unacceptably long. Figures related to the impact of the acting judges on the workload indicate some impact, but without additional judicial resources, the court is going to struggle to deliver justice in a timely fashion. That is enough editorialising.

If I might be permitted some general reflections. My career in the law commenced when I first went into partnership in a country practice in Mount Gambier in the south-east of South Australia. My partner left to join the magistracy after some six months. Thereafter, the steep learning curve and terror of the Limitations Act and running a trust account significantly moulded my character.

Each of my later appointments thereafter increased my experience, but more importantly, brought me into contact with people of great legal erudition and learning. As I said at my appointment ceremony, I had the privilege of being articulated to the Honourable Dr Howard Zelling, the Honourable Andrew Wells as Crown Solicitor and Solicitor General, and the Honourable Brian Cox, who then succeeded him as Solicitor General and both later judges of the South Australian Supreme Court, influenced me greatly at the Crown Solicitor's Office.

My formative years in the law were dominated by the Bray court, Dr John Bray, Dame Roma Mitchell, who was the active patron of the chambers that I eventually joined, George Walters and of course Howard Zelling. All of those persons had a significant effect on my career in the law and I pay tribute to them for that.

During that time, I became a reserve officer in the Legal Corps and the boundaries of my experience in the law and matters military were greatly expanded. Mind you, the acronym that I was given on the military task force in which I was serving does not necessarily reflect that. That acronym was DADFA. If I tell you that the DAD stood for Deputy Assistant Director, you can probably guess the rest.

My appointments as Solicitor General for South Australia, Senior Public Defender and Crown Advocate for New South Wales, Chief Counsel for the Legal Services Commission and Member of the National Crime Authority, were all positions that gave me varied and different experiences and insights. I particularly enjoyed my time with the public defenders in New South Wales. It introduced me to the New South Wales bar and the company of especially skilled and dedicated advocates. I am particularly

pleased that one of my fellow public defenders, now District Court Judge Stephen Norrish, could be here today.

5 That experience in being associated with the New South Wales bar and my latter time at the bar in South Australia, I have found invaluable in appreciating the assistance that the bar and the profession generally gives to the bench with the quality of their advocacy and professionalism. Canberra and its community is also well served by its magistracy and administrative and civil appeal tribunal members. I am pleased to see so many, present and past, who are here this morning.

10 Canberra has given me many opportunities to be involved in its community. I have also had an abiding interest in the arts, particularly the performing arts, because of the ability of the arts to question and affirm our culture. My time on the board of the Cultural Facilities Corporation I found immensely fulfilling in being part of an organisation that is responsible for managing and developing cultural activities in the Territory. I am pleased that the Chair, Professor Don Aitkin and the CEO, Harriet Elvin are here today. Despite the shadows that creep over all successful organisations in the form of seeking to fix something that ain't broke, I will the Cultural Facilities Corporation well for the future.

15 The community of Canberra has been very welcoming. In what the Canberra Times has recently unkindly described as my veteran status, I have developed a probably unhealthy but abiding interest in playing tennis. I am a little like the older citizen whose doctor suggests that tennis might be a suitable exercise. I then found that when playing, I would see the ball coming towards me and my brain would react by immediately saying, to the corner, backhand, to the net, smash, go back. However, what happens next, my body says, you must be kidding. Nevertheless, over my time here I have obtained immense enjoyment from fumbling around on a tennis court enjoying the company of a diverse group of fellow travellers.

20 My wife Laura and I are extremely grateful to be able to enjoy the company and friendship of so many in the Canberra community. To all who have helped us feel at home and part of the community here, may we express our heartfelt gratitude. I have found those who practice in the legal profession in Canberra to be of great assistance in the courtesy and professionalism that they have extended to me. That comes from what I perceive to be a strong commitment to justice and public service. My task has been made much easier because of it.

25 I would wish to expressly acknowledge all of the assistance that I have been given by the court staff and particularly the Registrar, Annie Glover,

the registry staff, the library staff and the Sheriff's officers. For almost all of my time here, I have been supported by Judith Green as my personal assistant. She has been quite incredible in her qualities of diligence, professionalism and loyalty, enabling me to cope with all my real and imagined crises. I am particularly fortunate that she chose to stay with the court for as long as she did, eventually having to leave as, in public service jargon, as a 54/11 retiree. I, as well as John Gallop, am the fortunate beneficiary of her practicality and solicitude.

To my associates, Heather Collins, Tara Assani, Will Lehane, Celina Hart, Joanne Howski, Mark McCormack, Tim Crispin, Sara Basuani, Jessica McLaren, Monique Zheng and Duncan Harrington, they have all shown immense patience and indulged me in my tyranny. They have been assiduous in researching and correcting my judgments. I have valued their comments and reactions and learnt a lot from them. I add that mostly they have managed to get me into the right courtroom, although there is one who I had to present a compass on departure. You will note that I have kept the gender neutral. All my former associates have my very best wishes for the future. I am sure the legal profession will be all the better for their participation in it.

To my family, my I publicly express my debt of gratitude. All four of my children, Rebecca, Sarah, Anna and Toby, are here today, and perhaps to see the conclusion of their relentless quest to bring me up, although I am sure they won't give up on it. There is one grandchild here today, Ava. It seems to me she is being instructed to follow in her parents' footsteps. I am very proud of my children and they have all contributed their bit in giving me the delight of grandparenthood.

To Laura, who I brought here from her safe and settled employment and lifestyle in Adelaide, I thank her for her unflagging love and support. I will now be far more available in evenings and at weekends and she'll have my undivided attention. She may, however, fall into the category of people who should be very careful about what they wish for.

To my successor, John Burns, I wish you every success in your task. I hope you find it as challenging and rewarding as I have. As for me, I need to reflect on what is next. Thank you all.

HIGGINS CJ: Thank you, Justice Gray. I thank everybody present and, on that note, the court will now adjourn.

ADJOURNED

[10.24 am]