

THE SUPREME COURT OF  
WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE ALLANSON

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 9 AUGUST 2010, AT 9.30 AM

**MARTIN CJ:** The Court sits today to welcome to the Bench his Honour Justice Jeremy Allanson, who took the oath of office as a Judge of this Court at Government House earlier today, and I would like to particularly welcome this morning members of his Honour's family, including his wife, Caroline, and their children, Michael, Julia, Fiona, Olivia, Richard and Brittany, and I would also like to extend a warm welcome to his Honour's many guests.

I would also like to welcome Justices Barker and Siopis of the Federal Court of Australia, his Honour Chief Judge Peter Martino of the District Court of Western Australia, President Reynolds of the Children's Court, and I see also Judge Thackray, Chief Judge of the Family Court of Western Australia, Ms Cheryl Gwilliam, Director-General of the Department of the Attorney-General, and many other distinguished guests too numerous to name, including former members of this and other Courts.

I would also like to welcome those who will address the Court this morning, being the Honourable Mr Michael Mischin MLC representing the Honourable Christian Porter, MLA, Attorney-General of Western Australia, on behalf of the Government and, unfortunately, the Attorney is unable to be with us this morning; Mr Hylton Quail, President of the Law Society, and Mr Grant Donaldson SC, President of the Western Australian Bar Association.

Your Honour was born and raised in Western Australia. I won't mention the year of your birth for the sake of decorum, save to say that it puts you a little younger than me but also puts both of us more than a decade older than many of the more recent appointments to the Court. You were educated at Trinity College in Perth and later at the University of Western Australia, where you obtained the degrees of Bachelor of Jurisprudence, Bachelor of Laws and Master of Laws. Apparently you were particularly interested in criminology at university, which will stand you in good stead for the work which you are to undertake on this Court.

Your university studies were conducted during the 70s, so it comes as no surprise to record that your appearance in those days was characterised by long hair and an earring. Following your appointment as associate to Sir Ronald Wilson in the High Court of Australia, your Honour was prepared to adopt a more conventional coiffure but the earring remained and I am told that you were the first male associate in the High Court to attend the Court thus adorned, which caused a bit of muttering at the time.

Following your service with Sir Ronald, you were replaced by Ken Martin, who is of course now one of your colleagues on the Bench. The two of you form a not insignificant group of present and former Judges who have worked closely with Sir Ronald, including Justices Murray and McKechnie and former Justices Wheeler, Parker and Scott.

You were admitted to practice in Western Australia in 1981 and worked with the State Solicitor's Office until 1994. During your time in that office you worked mainly in the advisory and litigation area and gained a reputation for meticulous and erudite legal analysis tempered by commonsense and practical advice.

Your prominent clients included the Police Department, the Office of Racing and Gaming and the Electoral Commission. You were engaged in a number of significant matters, including the aftermath of the collapse of the Western Women Finance Group and increasingly worked more and more as counsel in cases involving the State. In 1994 you abandoned the comfort and security of public service and joined the independent Bar practising at the Chambers now known as Francis Burt Chambers.

I must confess that in the spirit of good humour which pervades the Bar, I was inclined to draw attention from time to time to your clothing, which seemed to be selected more by reference to comfort than style. I unkindly suggested that this might be due to your provenance in the Public Service where you and your colleagues were no doubt accustomed to wearing grey cardigans stretched out of shape after decades of use adorned with leather patches on the elbows to cover holes made by friction with the desk.

Given that history, I was more than a little embarrassed when a week or so ago you paid a surprise visit to my Chambers to find me wearing a grey jumper. When you rightly drew attention to my hypocrisy, the justification which I advanced based on the fickleness of the airconditioning in this building did not appear persuasive. I regret to advise, however, that you will shortly discover the validity of these observations.

During your time at the Bar you had a varied practice with some focus on public law issues. Your style as counsel would not be described as flashy or ostentatious; rather, the reputation you quickly acquired was more centred around thoroughness and commonsense based on a sound knowledge of the law and of procedure.

Your reputation and experience in the field of public law led to your appointment as an honorary consultant to the Australian Law Reform Commission in respect of its reference reviewing the Commonwealth Freedom of Information Act. It also led to your engagement to conduct inquiries for both State and Federal Governments, including an inquiry into cost overruns in the construction of Casuarina Prison, a review of the Occupational Health and Safety Act and a report pursuant to the provisions of the Aboriginal and Torres Strait Islander Heritage Protection Act. You were appointed to the ranks of senior counsel in 2007 after which you served as a member of the Legal Practice Board.

You have been an active participant in professional affairs and have served as a member and convener of the Administrative Law Committee of the Law Society of Western Australia. You have served as a member of the Legal Profession Complaints Committee, most recently as Deputy President of that Committee. You have also served on the Council of the WA Bar Association, most recently as Deputy President of that Association.

I am told that your interests outside the law are focused mainly upon family and music. Your knowledge of music, including both popular and classical, is legendary. It is difficult to see quite how we can put that knowledge to good use during your time on the Bench but we are working on it.

In younger days you were apparently an active participant in sport and I am told that you used to play squash regularly with Prof Eric Edwards, who was of course Dean of Law at the University of Western Australia for a time. I am told that he used to inquire, just before serving the first ball, whether you were ready to give in. Apparently, you did not. I would respectfully suggest to counsel appearing before you when you commence hearing your first case as a judge tomorrow that they should not emulate Prof Edwards and ask whether you give in.

Your Honour's proven commitment to professional practice and to the law leaves me in no doubt that you will make a valuable contribution to the administration of justice in this State during your time on the Bench of this Court. It only remains for me to say on behalf of all members of the Court that we congratulate you upon your appointment. We sincerely hope that you enjoy your time working with us and we welcome you, your wife Caroline and your family into the community of the Court. Mr Mischin?

**MISCHIN, MR:** Thank you, your Honour. If it please the Court. I take great pleasure today in welcoming his Honour Justice Jeremy Allanson to this Bench. Allanson J, as your Honour has mentioned, has had a distinguished legal career of more than 30 years, having graduated from the University of Western Australia Law School and began his career as a professional assistant to the then Crown Solicitor in 1977.

He was a senior tutor at the University of Western Australia Law School in 1978 and 1979 and in fact that was when I first met his Honour. He had the pleasure of tutoring me, I think, in criminal law at the time, although he probably doesn't remember that particular joy and anything that I did learn about criminal law was largely due to him, although any mistakes I have made since are entirely my own.

He then became an associate to his Honour Sir Ronald Wilson of the High Court and he made his mark early in his career, taking out the Anita and Meyer Davis prize in jurisprudence during his time at the University of Western Australia. He was admitted to practice in Western Australia in the High Court in 1981.

Justice Allanson was then employed as a legal officer with the Crown Law Department of Western Australia, as it then was, and again on a personal note, it was during that time that I had the pleasure of serving with him at the Crown Solicitor's Office. In fact he was responsible for my first incursions into the field of criminal prosecutions and advocacy in the then Courts of Petty Sessions and I did my best to follow the example that he had set of meticulous preparation, of balance and of the responsibilities that are invested in a prosecutor for the State.

His Honour joined the independent Bar in 1994 and practised as a barrister with WA Law Chambers, later to become known as The Francis Burt Chambers, and in 2007 he was appointed senior counsel. His areas of practice focused largely on general litigation with a particular interest in administrative law and he has had extensive experience in taxation and associated matters in Federal tribunals.

He has also conducted the several inquiries that your Honour the Chief Justice has outlined and has been an honorary consultant to the Australian Law Reform Commission on the review of the Federal Freedom of Information Act and for several years has been a member and a convenor of the Law Society of Western Australia's Administrative Law Committee. From 2007 through to 2010 his Honour was a member of the Legal Practice Board, a member and then Deputy President of the Legal Profession Complaints Committee and Deputy President of the Bar Association in 2010 and to date.

As your Honour the Chief Justice has mentioned, his Honour Justice Allanson has a particular passion for sport and was a keen cricket and hockey player but I believe has now retired. I am not sure if that's the case but we will soon see, no doubt, and still enjoys watching sport. He also, as I recall, has a passion for reading as well as music and I owe it to him to have introduced me to the joys of such authors as Dashiell Hammett and Raymond Chandler back in my days at the Crown Law Department, but mostly he enjoys spending time with his wife Caroline and their six children.

His Honour has had an impressive track record. It has not been a flamboyant career, as many counsel at the Bar seem to enjoy nowadays, but it has been a solid and worthy and careful - "careful" is not the right word but a most distinguished career in the fields of practice in which he has concentrated. He will be a tremendous asset to this Bench and I am very pleased on behalf of the Attorney-General and the government of Western Australia to welcome him to the Bench of this Honourable Court, where I am sure that he will serve with distinction and make a significant contribution to the administration of justice in this State. If it please your Honour.

**MARTIN CJ:** Thank you, Mr Mischin. Mr Quail?

**QUAIL, MR:** May it please the Court. It is a pleasure for me to represent the Society today in welcoming your Honour to the Bench of the Supreme Court. Having said that much, I know that your Honour would like me now to sit down but at the risk of embarrassing your Honour, it would be remiss of me not to record the Society's appreciation for the work you have done on behalf of the profession over many years.

You have been a member of the Society since 1993 and, as we have heard, served on the Administrative Law Committee for 13 years. You were also convenor of that Committee and counsel benefited from your advice and commonsense on many occasions. You have been a regular presenter in the Society's CPD program, which is a reflection of your commitment to education and also your collegiality.

Your Honour is one of the most generous of barristers, freely giving of your time and knowledge to assist others, particularly those of us on the 23rd floor who sometimes just don't get it, and while that can involve a discourse on reserved powers, it's more likely to be about the cryptic crossword. I am afraid there is daylight of, on average, 45 minutes between your Honour and the rest of the pack. In fact I fear that there are some devotees who may not finish at all, now that your Honour has gone. Perhaps then one last request from the usual suspects who are, yet again, stuck this morning. Can your Honour tell us what 9 across is, a self-effacing action of the Japanese, two four-letter words?

Your Honour is also a lover of books, music and film. I, for one, regret that the level of common room debate will drop with your Honour's departure. Without your Honour to persuade us of the merits of In The Mood For Love and Psycho Beach Party, I fear we will slip back to debating whether Woody can displace Buzz in Jessie's affections in the next instalment of Toy Story.

Your Honour's potential was spotted early. Whilst at the Crown from 1978 to 1994, you developed a formidable reputation for your legal acumen and also as an advocate. When Ron Davies, who I see is here today, one of WA's most formidable prosecutors, was appointed QC in 1984, he passed his junior robes to you in recognition of your Honour's ability. I'm told he said then that you were a future Solicitor-General. He was wrong. I don't often get to say that, so I thought I would and I'm glad he's here to hear me.

The State's loss, though, is the Court's gain. I recall appearing against you in 1992, an experience engraved in my memory, so comprehensively did you destroy my case. Many have had that experience. In Court you are renown for being concise, reserved and to the point. There were no theatrics in your presentation and you only ever played the ball. These qualities will serve you well on the Bench.

Such was your Honour's reputation that you have attracted many of the best briefs; to name just some in the last year or so, Zentai for the Minister; Rossiter for Bridgewater; the Ward coronial for G4S; and most recently in the Dingle inquest for the doctor. Your Honour has also prosecuted substantial matters for the Commonwealth and is recognised for your expertise in administrative, tax, constitutional, native title inquiry and common law.

Your Honour's skill and experience will be an asset to the Court and on behalf of the Society and profession I wish you well in this next stage of your exemplary career. May it please the Court.

**MARTIN CJ:** Thank you, Mr Quail. By the way, 9 across is "hari kari", something I thought you would be familiar with. Mr Donaldson?

**DONALDSON, MR:** May it please the Court. The Bar welcomes your Honour's appointment. It is a privilege for me to represent the Bar at this hearing. It was recently observed at the sitting to welcome Justice Corboy as a member of this Court that his appointment had been greeted with unprecedented joy and satisfaction by the Bar.

Justice Corboy will no doubt be pleased to know that our memories are short because the response of the Bar to your Honour's appointment has been one of unprecedented joy and satisfaction. This sentiment is in part a response to the undeniable truth that there have been few appointments to this Court of practitioners with the legal heritage of your Honour.

Having excelled at the Law School at the University of Western Australia, your Honour spent a year or two as a full-time member of the academic staff of the Law School. You were an admired teacher. Your Honour entered the practising profession in rarefied circumstances. You were, for a time, the professional assistant to the then Solicitor-General, Sir Ronald Wilson.

The position of professional assistant to the Solicitor-General was then, as it is now, one of great prestige and in serving in that position your Honour joined an illustrious group that includes, among others, the Honourable Christine Wheeler QC, Justice Pritchard, Judge Yeats, Pettit SC and Mitchell SC.

In addition to this service, your Honour was Sir Ronald Wilson's first associate after Sir Ronald was appointed to the High Court and, as we have heard, you were immediately followed in that position by Justice Kenneth Martin.

After these experiences, your Honour finally set out to practice in a more traditional sense. You did so initially with great success at the Crown Solicitor's Office, as an officer of which your Honour appeared in all Courts on a regular basis and in a wide variety of matters.

Your Honour joined the Bar with the encouragement of the then Crown Solicitor who, after you joined the Bar, briefed you and sought your advice often. Resort to the Bar by the dark lord, Panegyres, was rare and that he sought you out is a testament to your capacities.

For many years after you left the Crown your Honour's name was whispered with gentle and kindly admiration by Panegyres and some have apprehended that your departure from the Crown was regretted by him more than that of any of the other galacticos who starred there and left to star elsewhere.

Your Honour was a member of the Bar for some 16 years until last Friday. In that time you appeared in numerous substantial matters and in numerous small matters and although your Honour never allowed work to exhaust or exclude other pursuits, you always seemed to have enough to do. You devoted the same attention and care, whether you appeared in the most substantial constitutional law matter or a small dispute for a person who had no hope of meeting your fee and who you never intended to charge.

Your Honour's practice in the Federal jurisdiction, oftentimes representing the Commonwealth, was a national one and of national prominence. Your Honour appeared in many of the largest public law matters and you were, for your whole time at the Bar, a favoured counsel of the Commonwealth and attracted Commonwealth briefs of great prestige.

Your Honour was perfectly at home across the whole of the Federal jurisdiction. In recent years your Honour appeared in some of the largest native title matters considered by the Federal Court, many of the most substantial Federal tax matters, and prosecuted many complex Commonwealth criminal trials.

Happily for your Honour, not much of this is going to be of any direct use to you as a Judge of this Court, though it must be said that if your Honour can master the Native Title Act, the Income Tax Assessment Act and the criminal responsibility provisions of the Commonwealth Criminal Code, you could do just about anything in law and space.

It would be wrong, though, to convey an impression that your Honour practised in some sort of incubated, somnolent, government-underwritten paradise. Throughout your time in practice you appeared frequently in common law and you have defended in many substantial and keenly-fought criminal trials. In recent years your Honour did a great deal of work before the Coroners Court and the CCC, where your skills as a cross-examiner and your sure judgment were put to great use.

Observation of your Honour's appearances in recent times in those fora brings to mind the observation often attributed to George Kennan of some forgotten person in the Court of Stalin, that you had the rare capacity for keeping silent gracefully.

Of course your Honour took silk too late and the fact that you had to be begged to take silk says a great deal about your Honour. One of the things that it says is that your Honour took a long time to work out what you wanted to do when you grew up, but perhaps more so, it illustrates that your Honour never sought and thought little of

apparent status and you are immune to the grinding, petty ambitions of most of us. With your Honour there was never any hint of self-promotion or fervour about oneself that is all too common with the insecure and the weak-willed.

I mentioned earlier that your Honour managed to keep your practice in a State that permitted other pursuits. You have oftentimes embarrassed the Bar's common room cave dwellers in various ways with certain of these pursuits. One source of embarrassment concerns your recommendations as to films that we might usefully see.

Without breaching the cone of silence rule, as my friend Mr Quail has done, I can disclose that talk of cinema in the confines of the Bar common room is usually as to the latest offering from Austin Powers or the latest instalment in the Porky's trilogy and your Honour's eager reviews of the latest Bulgarian or French offering were always keenly anticipated and welcomed. Your film reviews often cheered and cleared the common room and your Honour remains the only person I have ever met who has seen a Werner Fassbinder film and claims to have liked it.

Your Honour always seemed to be reading something absorbing and your Honour's love of literature is intense and abiding. Your love of literature and poetry in particular is a large part of your charm and who you are and your Honour often enriches conversation with an unpretentious literary allusion that is prescient.

Your Honour has a facility, now rare and becoming much rarer, to recite poetry with precision. To those of us whose capacity in this respect is limited to the five lines of 'Twas On The Good Ship Venus, several stanzas of A. Housman or Edna Millay to explain or inform an emotion is a little disconcerting.

Your Honour has been a most popular member of the Bar and your occasional lapses into unworldliness are treasured. In this respect you were seemingly bewildered when reminded that you will be the fourth habitual earring wearer to be appointed to the Supreme Court Bench and when reminded you paused, seemingly to reflect upon whether you had ever seen Sir Francis Burt or Justice Wallace wearing earrings.

Your recent drive with Lampropoulos, during which he sought to impress you with his brand new Lexus car, was deflated by your Honour's casual observation that your wife had recently got the same car from the government fleet, much to Lampropoulos's surprise, and to your comment about how functional Toyota Camrys are.

Although you never realised it, your Honour was one of the Bar's most liked and popular characters and we will miss you, not only as a character but as an admired

colleague. You practised for every day of your career in the finest traditions of the profession, with care, with intellectual rigour, with good sense, with humility and with a manifest hatred of injustice, and you leave a hole at the Bar that will be difficult to fill.

That said, there are few who we could imagine ably filling the vacancy in this Court left by the retirement of Justice Owen. It is high praise to say that your Honour is one of them and that to your erstwhile colleagues, your appointment to fill this vacancy is fitting. We wish you well. May it please the Court.

**MARTIN CJ:** Thank you, Mr Donaldson. Justice Allanson?

**ALLANSON J:** Thank you. I actually wondered what anybody would find to say about me on an occasion like this and I'm glad that the truth didn't stand in the way. Perhaps I should start with a quote from one of my favourite films, *Fasten Your Seatbelts, We're In For A Bumpy Night*. Anybody can pick that reference.

I am very pleased to be here. I have for the last few years had a practice that was largely built around phone calls from solicitors saying, "Are you available because the counsel we had briefed has been appointed to the Court?" and I thought I had finally got away from that and I have been appointed to the Court and I was approached by the listing coordinator who said, "You're taking over the list of a Judge who has been appointed to the Court of Appeal," so the lyrics change but the melody remains basically the same.

The other thing that remains constant between my practice and what I now find in front of me is the need to learn, and comment has been made this morning about the open-door policy and my involvement in various forms of legal education.

That is the way I was brought up in the law. At my first interview for a job in the law, which I am happy to say I got, the then Crown Solicitor Clyde Langoulant basically looked and saw that I had a law degree, that I could speak English and that I was prepared to learn and on the basis he took me on and I practised for 13 years in the Crown Law Department, where it was always the case that if there was a question, there was either a colleague close in experience to you who had recently undergone the same embarrassment or faced the same problem who was willing to speak to you or right up the chain.

I can remember on occasion being unable to find anyone else, because everyone else was in Court, and knocking on the door of the then Solicitor-General, the Honourable Kevin Parker, who was prepared to put aside the work that he was doing and sit down with an inexperienced practitioner for 20 minutes and tell me what I should do and why, and it is on that basis that I have attempted to maintain that as part of my professional practice.

Mention has been made of Ron Davies QC, who I see is present today, and I am pleased that he could be here today. He was my mentor and my debt to him is incalculable.

While at the Bar, I of course had the joy and the invaluable experience of working with many colleagues and many senior practitioners. I had the benefit, because of the nature of the practice that I had with a lot of Commonwealth work, of doing a lot of work with interstate practitioners, and I know that it is not popular to speak about those from the east coming over here and practising over here, but I had invaluable experience working with senior counsel, particularly in the tax area, and another Davies, Greg Davies SC from the Melbourne Bar, who was an excellent teacher and somebody to whom again I owe a great debt.

I am particularly conscious of how important learning on the job was to me at this time when we have continuing legal education and at the Bar, of course, there was an excellent Readers' Course, but I am conscious of how much I had benefited from training on the job and from assistance from those around me.

I see that the Articles Training Program run by the Legal Practice Board this year was unfortunately required to close. It looks as though there may be an alternative provided but we are in a situation where we have a College of Law. We perhaps will retain an articles system but it is imperative that the profession continue to educate its own members. That is my homily for today.

This is not an Oscar acceptance speech. I am not going to thank a lot of people. I thank my family. They are present. We have just about got enough for a verdict. We can probably get a majority verdict anyway, if I could get any of them to agree, which is not the easiest thing, but like the family of any successful, and I hope I am a successful, barrister there have been the nights and the weekends when I have not been there, but that won't change.

We have heard comment from his Honour the Chief Justice about my interesting comfortable dress. I now find myself wearing one of these. When I tried it on and showed it to the children the other day I was told I looked like Harry Potter, which I suppose makes this look like high tea at Hogwarts.

Perhaps the only other thank you that I should put in is that I was at the Bar for 16 years and during all of that time I have had the same secretary who was also secretary to Michael Corboy, the Honourable Justice Corboy, and in fact there is a queue of people knocking at her door now on the basis that she is apparently the kingmaker of Chambers. When Justice Corboy was appointed, Marjie said to me, "Now, you make sure when you become a judge that you thank me for all of my years of service." I said, "That's two things that will never happen, Marjie." One of them has happened and now the other one has. Thank you, Marjie, for 16 years and thank you all.

**MARTIN CJ:** Thank you, Justice Allanson. The Court will now adjourn.

AT 9.59 AM THE MATTER WAS ADJOURNED ACCORDINGLY