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THE SUPREME COURT OF

WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE JUSTICE CHANEY

FULL BENCH

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 29 JUNE 2018, AT 4.32 PM

**MARTIN CJ:** The court sits this afternoon to celebrate the judicial career of the Honourable Justice John Chaney upon the occasion of his retirement from the Bench at midnight tonight. Before going any further, on behalf of the court, I would like to acknowledge the traditional owners of the lands on which we meet, the Whadjuk people, who form part of the great Noongar claim of south Western Australia. We pay our respects to their elders past, present and emerging and acknowledge their continuing stewardship of these lands.

I would like to particularly welcome his Honour's family: his wife Raelene Palmer, his son Tim and his son Tim's fiancée Bianca, his Honour's daughter Olivia. Unfortunately his Honour's son Daniel and his partner Mia, who live in London, and his daughter Ellie, who lives in Victoria, are unable to be present today. I also welcome his Honour's mother-in-law, Mrs Mavis Cuthbertson, and his Honour's brothers and sisters and their partners but, unfortunately, naming all of them would consume all of the time allotted to me.

I would also like to welcome Justices Katrina Banks-Smith and Craig Colvin of the Federal Court of Australia, her Honour Judge Julie Wager, Present of the Children's Court, his Honour Judge Richard O'Brien of the Family Court of Western Australia, Mr Peter Quinlan SC, Solicitor General, Ms Amanda Forrester, SC, Director of Public Prosecutions, Ms Ros Fogliani, State Coroner, Dr Adam Tomison, Director General of the Department of Justice, and other distinguished guests too numerous to mention, including many past members of this and other courts.

I would also like to welcome those who will address the court this afternoon, being the Honourable John Quigley, MLA, Attorney General of Western Australia, Ms Hayley Cormann, President of the Law Society of Western Australia, and Mr Matthew Howard SC, President of the WA Bar Association. This is the third ceremonial sitting of the court held to mark the distinguished legal career of Justice John Chaney. It almost didn't happen. Notwithstanding your Honour's reluctance to convene this occasion, fortunately your Honour's wife, Raelene prevailed, as wives general do, and here we all are.

The first of this trifecta of ceremonial sittings was held in the District Court in April 2004 to welcome your Honour to the Bench of that court. The second was held in this court, although, not, of course, in this courtroom, on 17 February 2009 to welcome your Honour as a member of this

court. I had the honour of presiding on that occasion. I think there might be a message to be learned from the fact of presiding at the farewell sitting of a judge one welcomed onto the court, and I propose to put that learning into effect in exactly three weeks' time.

Your Honour's distinguished legal career prior to judicial appointment was canvassed very thoroughly at each of the two ceremonial welcomes. That fertile soil has been well and truly furrowed, and I don't propose to rake over it again, lest any resting skeletons be inadvertently unearthed. Instead, I propose to focus my remarks upon the much safer ground of your Honour's judicial career. There is, however, a useful segue into my observations with respect to your Honour's judicial service to be drawn from your sporting prowess prior to your appointment, including your role in the touring cricket team of merry mischief makers known as The Stragglers.

Unfortunately, wisdom does not record the match statistics pertaining to The Stragglers tours. One might have thought that the lack of reliable - that that lack of reliable data might have e prowess of that team has been obscured by the sands of Tihar the consequence that your Honour's contribution to them. However, the opposite is the case. The lack of reliable data has meant that your Honour's achievements on the cricket have been embellished a little every time they have been recounted to the point where your Honour has achieved the status of living cricket legend and must surely be expecting a call from Justin Langer and the selectors to help out the Australian cricket team in one of its darkest hours.

The rather tortuous segue, which I draw from this digression into sporting history, is that if one were to describe your Honour's judicial career by analogy to cricket, your Honour would be described as an exceptional all-rounder, right up there with Garry Sobers and Wally Hammond. Prior to your appointment to the District Court your Honour practised mainly in the fields of commercial law, administrative law, planning law and medical negligence. The District Court to which you were appointed is the state's pre-eminent criminal trial court, and following your appointment you were quickly required to adapt to the foreign world of criminal trials.

Having successfully completed that transition you took on another challenge in the form of your appointment as one of the two inaugural deputy presidents of the State Administrative Tribunal in 2005. Together with Justice Michael Barker and Judge Judy Eckert you took on the

responsibility of creating an entirely new jurisdiction from the ground up. Because this was a new form of administrative tribunal it was not appropriate to simply adopt the processes and procedures which had been developed in courts over centuries.

Rather, the challenge was to strike an appropriate balance between procedural propriety on the one hand and the need for informality, flexibility, speed, efficiency and economy on the other. Getting that balance right in any particular case was made more difficult by the great diversity of jurisdiction conferred upon the tribunal. That jurisdiction included state revenue cases which might involve stamp duty of many tens of millions of dollars, planning cases ranging from single houses to massive commercial developments, professional regulation cases involving the career and livelihood of a professional person on the one hand and the protection of the public on the other, and guardianship cases where the tribunal takes the responsibility of protecting some of the most vulnerable members of our community.

The challenges arising from the diversity of this jurisdiction only increased over time as the tribunal's jurisdiction expanded exponentially embracing high volume areas like building disputes and topics as diverse gender reassignment, Working With Children cards, and mental health appeals. Following the departure of Justice Barker of the Federal Court of Australia, your Honour took over as president of the tribunal and became a member of this court on 10 February 2009.

You served in the role of president for a term of five years on top of the four years you had already served as deputy president. It is, I think, impossible to overstate the importance of the contribution which you made to the administration of justice in this state through your signature role in the development of the tribunal in its formative years. During your term as president, the flexible processes which you had fashioned, in conjunction with Justice Barker and Judge Eckert were consolidated, together with the focus upon informality, expedition and efficiency. The flexibility of approach meant that cases could receive the degree of formality which was appropriate to the particular issues involved.

Your Honour's leadership role across the various areas of the tribunal's jurisdiction entirely justify my description of your Honour as an exceptional all-rounder. Through your nine years of service on the tribunal, your

Honour has played a major part in the establishment and development of an organisation which has become a vital component of the systems for the administration of justice in this state.

I've touched upon only some areas of the tribunal's jurisdiction but they are sufficient to demonstrate that the issues addressed and resolved by the tribunal include issues of the greatest importance to many members of the Western Australian community. Your Honour is entitled to look back with great pride at your exceptional contribution to the development of that important institution but of course, the story doesn't end there.

Following the completion of your term as president of the tribunal, your Honour turned to full-time service as a member of this court, again fully justifying your description as an all-rounder. You undertook the management of a list of cases in the commercial and managed cases list, have undertaken a number of criminal trials and have served as an acting member of the Court of Appeal from time to time. For more than four years, you've served with distinction in all areas of the court's jurisdiction, including the conduct of a number of long and extremely complex cases.

To torture the cricketing analogy even further, it has been a great comfort to me to know that there has been a safe pair of hands to whom complex and contentious cases could be referred with confidence. But all good things must come to an end, and so it is with your Honour's judicial career. Your Honour's demonstrated capacity to work effectively in a wide variety of legal fields and your extensive experience as a mediator leave me in no doubt that your Honour's services are likely to be sought in a wide variety of fields and endeavours following your retirement from the bench.

I don't think Raelene needs to worry that you will be cluttering up the house, although hopefully this transition in your professional career will offer greater opportunities for the travel which both of you so obviously enjoy. It only remains for me to express, on behalf of the court and the community, our gratitude to your Honour for your Honour's outstanding contribution to the administration of justice in this state over a long and exceptional career and to wish you a long, healthy and active retirement. Mr Attorney.

**QUIGLEY, MR:** May it please the court. It is with great pleasure that I appear on behalf of the Government of

Western Australia on this occasion of your Honour Judge Chaney's retirement and to acknowledge your Honour's significant contribution to the administration of justice in this state as a judge of this court, the District Court and of the State Administrative Tribunal for over 14 years. I too acknowledge the traditional owners of the land upon which we meet this afternoon, the Whadjuk people, the Noongar nation and pay my respects to their elders, past, present and future.

May I also acknowledge and congratulate your Honour's family, near and far, especially your wife Raelene, your son Tim, his fiancé Bianca, your daughter Olivia and in their absence, your son Daniel and daughter Ellie. Given the commitment and sacrifice required for the contribution that your Honour has made to the court and the community, your family rightfully shares in the accolade that your Honour receives today.

Your Honour's career, even prior to your first appointment to the bench in 2004, has always been one of conspicuous public service. During your almost 30 years of busy legal practice, first as a solicitor and then as a partner with Northmore, Hale, Davy & Leake and then as a member of the independent bar, your Honour always devoted a significant amount of your time to the voluntary work for the benefit of the profession and the wider community.

To name but a few, your Honour has served as a counsel of the Law Society for 12 years, including president in 1991. Your Honour has served as a faculty member of the law schools of three universities in this state; the University of Western Australia - which is your alma mater - Murdoch University and Notre Dame University. In relation to the latter two law schools, the second and third in this state, your Honour not only sat on the boards of the law schools but was a member of the planning committees that led to their establishment.

Your Honour was also a foundation director of the Australian Advocacy Institute and the editor of brief for many years. Beyond the law, your Honour has also consistently and generously contributed your time and skills to charitable institutions. Your Honour's judicial career has therefore been a continuation of your Honour's generous sense of service to the community as a whole.

As the Chief Justice has remarked, your Honour has been an exceptional all-rounder throughout your judicial career. Covering across the jurisdictions, you have served an extraordinary diversity of areas of law and, with those

areas of law, a diversity of people from all walks of life. In that regard, the Chief Justice has also observed that your Honour has a great capacity to adapt to and then excel in each new chapter of your judicial career. In addition to your excellence in the law, three other attributes of your Honour deserve particular mention.

Firstly, your Honour's prodigious work ethic. Your Honour has, at all times, been a judicial officer who has been prepared, as it were, to roll up your sleeves and to shoulder a significant amount of the workload of the court assigned to this court. This was particularly evident in your Honour's presidency of the State Administrative Tribunal where, in addition to the administrative responsibilities in managing the tribunal and in managing the lists of various streams, your Honour regularly took the most difficult and challenging of cases.

In this, your Honour's style of leadership was a model of leadership by example. Your Honour did not lead just by fear; rather, no member of the tribunal would be expected to carry a case load or responsibilities that your Honour was not prepared to carry yourself. Leading in this way not only contributed to the effectiveness and the efficiency of the tribunal but importantly, it enhanced its morale and camaraderie.

Second and related to this has been your Honour's modest and unassuming style. While serving as a judge of this court and elsewhere, as evidenced by your Honour's beloved cricket troop being christened The Stragglers, your Honour has had a natural humility and modesty that borders on self-deprecation. At a recent conference that I attended, the Piddington Society, which was attended by your Honour, your Honour said - and I quote - "It's actually quite hard being a judge, especially if you're a person of modest talent".

Your Honour added that you could make this apparent admission against interest because - and I quote - "The Attorney-General can't sack me now". Of course, however, this disarming modesty was one of your Honour's greatest strengths as a judge. It was a quality that enabled your Honour to put counsel and witnesses at ease, identifying the ways in which you would be assisted by the task of resolving the issues in the cases and always in a manner that reflected genuine curiosity and willingness to listen to the point which counsel was seeking to develop.

In your Honour's court, the right to be heard was not a mere formality to ensure that a minimum of procedural

fairness required by law but an opportunity for a genuine exchange of views and an opportunity to persuade. Finally, and combined with these two qualities, was your Honour's pleasant and considerate manner to all people in court; counsel, litigants, witnesses and court staff. Your Honour has always been respectful to all those who appeared in your court.

This didn't mean your Honour always had to be jovial; at times, the relentless workload of the court and the performance of some of those who appear before your court was bound to produce fatigue and even, at times, irritation. Rather, the required skill is always to bear those difficulties with good grace and even temper; this skill, your Honour amply demonstrated. As I have said, your Honour's career to date has been one of a great service to the community.

In this, I would remind your Honour of the words of a great Western Australia judge - and I quote:

Service to the community does not, of course, mean that the judiciary should pander to campaigns generated from time to time by popular press. Rather, the community's interests are served by the proper and careful application of the law, the maintenance of an impartial judiciary and enduring respect, fairness and sound judgment in relation to everyone involved in the court process.

Those words, of course, were spoken by your Honour at your welcome to the District Court 14 years ago. When your Honour said that 14 years ago, it was no doubt aspirational. In light of your Honour's outstanding contribution to the administration of justice and the community over so many years, it now can be seen as prophetic. On behalf of the Government of Western Australia and the community of Western Australia I thank your Honour for that contribution and wish you all the very best in retirement for more well-earned time spent with your family and every success in your future endeavours. May it please the court.

**MARTIN CJ:** Thank you, Mr Attorney. Ms Cormann.

**CORMANN, MS:** May it please the court. It is a privilege to appear today on behalf of the Law Society of Western Australia at this special sitting in recognition of the Honourable Justice John Chaney, today being his farewell from this court. May I also welcome and acknowledge the

members of your Honour's family here, the friends and colleagues present, and also the many distinguished members of all levels of our judiciary.

As we have heard, your Honour has had an outstanding career in the law. This began, as we have heard, with the many years spent, 18 in particular, at the then firm of Northmore Hale. Your Honour has previously credited the approach to the practice of law by the then partners of that firm as having taught your Honour a great deal about the importance of professional ethics. At your Honour's welcome to the District Court in 2004 you described having had the early benefit in your career of being trained by lawyers in this state of the highest calibre and that you considered it an honour and privilege to have practised with them.

Your Honour subsequently enjoyed the social and connected atmosphere at the independent bar in the lead up to and after your appointment as senior counsel in 2001. This, of course, was followed by your Honour's subsequent appointment to the District Court in April 2004, and ultimately in 2009, your Honour, in February, was welcomed as a justice of the Supreme Court and is president of the State Administrative Tribunal.

This means that for long over a decade now your Honour has provided service to the people of Western Australia in courtrooms such as this one, and today we express our gratitude for this commitment and this service. But it is the case that not all the courtrooms during that period have been exactly the same and, in fact, they have differed in important ways. Specifically in relation to your work at the tribunal, your Honour was committed to ensuring that jurisdiction had its own identity separate from other courts and your Honour worked especially hard to ensure it had its own building.

Through these efforts, the tribunal and those in need of its services and those who work today in the jurisdiction enjoy the benefits of its present environment and sole use of its premises, having been purpose built and designed with the essential theme of accessibility to justice, removing physical barriers and adhering to calming tones and natural light. Overall, a huge effort went into the design and the resulting setup is impressive and functional as regards which your Honour was highly instrumental.

Another of your Honour's passions and experience have been reflected in the mediation of disputes. In welcome

ceremonies gone by, by numerous advocates, your Honour's skills in mediation have been well described and these skills have been highly valued by the professional judiciary. Then, throughout your time on the Bench, your Honour has properly utilised those skills focusing parties on solutions and outcomes with a view to resolving complicated matters without the need for a contested hearing.

In the tribunal this impact was especially great and your Honour was instrument in bringing about change, in particular, in the VR or vocational regulation stream of the tribunal which had not previously been open to mediation or mediated outcomes. As regards this, and giving evidence in 2007 at a Parliamentary inquiry into the jurisdiction and operation of the tribunal, your Honour articulated exactly how it was that successful mediation in these matters could be properly achieved in the interest of justice.

Your Honour explained one of the concerns about dealing with vocational matters in mediation, which is a private process, has been that if a settlement was reached there would not be public accountability on the decision, and the public and complainants would not know what had happened. However, your Honour then also explained we have met that concern by requiring two things: firstly, if a vocational body and a practitioner reach agreement in mediation the tribunal would not make orders affecting that outcome unless it considers it is an appropriate outcome in light of the facts.

The second, and perhaps more significant point, is that we usually require the parties to set out for the purposes of the order the material facts upon which the conclusion was based and the order as to what the penalty is which is then published on the website. Therefore, it is public information. Anyone can look it and see what the practitioner has done and can see that the - and can see the outcome the tribunal has imposed. This approach paved the way for the immense success of mediation in such difficult matters and it is still used widely and appropriately today.

For the purposes of this ceremony I reference it because it is a very good example of your Honour's skills and your commitment to achieving a legal system which meets the objectives of accountability, transparency and efficiency and all the while ensuring that justice is done. By your colleagues generally, your Honour is fondly described and genuinely liked and respected, being referred

to as incredibly humble, loyal, innovated, supportive and inspiring, and that, of course, your Honour will be greatly missed from here.

Your Honour over the years has also made an enduring contribution to the Law Society, having been a valued member for more than four decades. Your Honour served on our council from the early 1980s before progressing through to the executive as treasurer, vice president and as our president in 1991. In recognition of your contributions and commitment your Honour was awarded membership of the society in 2005. During your Honour's presidency in 1991, the Litigation Assistance Fund was established.

This was at the time described as one of the boldest initiatives taken by the legal profession throughout Australia and an important experiment being watched closely in all other Australian jurisdictions for its potential to increase access to the law. Your Honour was also involved in the establishment of the Law Access Pro Bono Legal Referral Scheme, an innovation that was ahead of its time in the early 1990s. This has now become Law Access Limited, a clearing house for pro bono matters helping hundreds of members of our community to access legal services.

From those very solid beginnings in the early 1990s Law Access has grown in its capacity and in its reach to the community. In fact, very recent demonstrations of the growing profile and significance of the work done by Law Access include the near \$50,000 in funds raised and the attraction of a further \$50,000 donation from the McCusker Foundation made just a few weeks ago. In the meantime, back in 1991 your Honour commented in the Law Society's brief journal that remarks had been made by a member that the Law Society was involving itself too much in so-called community stuff, rather than concentrating on protecting the interests of the profession. Your Honour responded that the simple answer is that the profession does not exist in a vacuum. Unless it is seen to be making itself relevant and making a real contribution to the community, it will be seen as self-serving and irrelevant. Your Honour's comment is as relevant now as it was nearly 30 years ago, if not more so. Historically, your Honour recognised the vital importance of pro bono and community work by our profession, and you committed yourself to encouraging the profession to engage in it and to do the right thing.

Nearly 30 years after your Honour's comments this call to action resonates with so many, if not by all of our profession and judiciary. One of the many ongoing contributions to your Honour to the work of the society has been in the area of continuing professional development, and in particular, to advocacy training. This includes leading our practical advocacy weekend, and we are delighted that in just over six weeks your Honour will again be head coach at that weekend for us. Your Honour is also a regular and welcome attendee at our social events, always a friendly face and high approachable and we look forward to welcoming your Honour to these events in the future.

In closing, like the Attorney, I too refer to comments made now more than 14 years ago in the District Court in April 2004 at your welcome ceremony. Back then it was said:

His Honour's standout attributes are his capacity for leadership, quality of commitment and spirit of contribution to professional and to public service. The legal profession has seen the full measure of these attributes. I am sure, Chief Judge, you will find his Honour will bring these same attributes to bear upon his service in this court together with equanimity of manner and sense of fairness as his Honour now presides over civil and criminal trials.

Your Honour, you have remained a judge of the people, for the people. And I reference these earlier remarks here because today, after 14 years, the profession and judiciary are witness to their having remained true in their entirety throughout this period. Ultimately, on behalf of the Law Society, I am delighted to congratulate your Honour on a very successful judicial career. And the Society and our members wish your Honour and your family the very best in your next endeavours. May it please the court.

**MARTIN CJ:** Thank you, Ms Cormann. Mr Howard.

**HOWARD, MR:** May it please the court. It is my privilege to appear this afternoon on behalf of the Western Australian Bar Association to farewell your Honour from this court. On the second of the three ceremonial sittings to which your Honour the Chief Justice referred, Colvin SC as he then was appeared on behalf of the Association. Reaching for uncharacteristic hyperbole and exaggeration, he had this to say by way of introduction to your Honour's welcome:

Vacancies in judicial offices always create great interest amongst barristers. There is often uninformed conjecture as to who may be in the field of possible candidates to be considered for appointment. It is difficult to know on what those observations were based. To digress, I must assure the court and the public, for that matter, that there is no truth to the somewhat malicious rumour that the Bar has been in a state of suspended animation which has prevented it doing any work because of certain forthcoming judicial appointments or more accurately, a particular judicial appointment, singular.

Returning to your Honour, Colvin SC went on to say that there had been no such conjecture in the lead up to your Honour's appointment to this court and as president of the SAT. That was because there had been such universal acclaim that your Honour was a Bradmanesque first pick. As your Honour the Chief Justice, has already stated, your Honour fulfilled that role with great distinction. That was equally true of your Honour as a judge of this court.

Your Honour was always a delight to appear before. You were open to being persuaded on a point and if your Honour was ultimately against the point or the proposition, one was left with the feeling of both being fully heard and that your Honour's decision was almost certainly correct. Your Honour's judgment should never be understated. With great confidence, in a misleading and deceptive case, counsel was able to advise their clients that if your Honour thought the particular advertising was misleading and deceptive, then it almost certainly was and the prospects of appeal from that judgment would be exactly nil.

In your Honour's 14 years of service, there must have been occasions when either counsel or the particular matter vexed your Honour. Your Honour never gave any indication of that having occurred. Your Honour was unfailingly polite and apparently always interested in the arguments put. To make good that proposition, one need only recall that your Honour, I am informed, continued to deliver judgment in a matter with a self-represented litigant in the same calm voice, after the self-represented litigant had thrown water at your Honour.

That is not to say that your Honour was not an efficient case manager or did not set a standard which was expected to be met. For example, your Honour, on at least one occasion, made your point as to the non-compliance with

programming directions by saying that all too often, they were treated like a stop sign in Jakarta. Your Honour's point was made firmly and clearly but not in a way that then interfered with the necessary dialogue between the Bar table and bench.

Indeed, may I suggested that if the Attorney were able to convince Treasury to fund a judicial cloning program, then by reference to your admirable personal and judicial qualities, your Honour would be the Bar's selection for our own Dolly the sheep. The Bar congratulates your Honour on your outstanding career and thanks you for your long service in three jurisdictions of this state.

Your service has been to the great benefit of litigants and the administration of justice. As your Honour the Chief Justice said, your Honour has, with respect, good reason to be proud; that, of course, is not your Honour's way. The Bar wishes you a long and happy retirement and we wish you all the very best for whatever lies ahead in this next phase of your life. May it please the court.

**MARTIN CJ:** Thank you, Mr Howard. Justice Chaney.

**CHANEY J:** Thank you, Chief Justice. Thank you, Mr Attorney, Ms Cormann and Mr Howard for those very generous remarks. I'm especially delighted to have been mentioned alongside names like Bradman and Sobers. There is another document in which I have my name adjoining that of a great cricketer, Bishan Bedi, the famous Indian spin bowler and that's a scorebook - a Stragglers' scorebook which reads, on about probably the 10<sup>th</sup> line of batsmen, "Chaney bowled Bedi zero".

But, as is traditional at these ceremonies, compliments getting given to the retiring judge are somewhat exaggerated; in fact, if I had realised how good I was, I don't think I would have retired. Normally, I'm the only one who goes around talking about how good I am and it's a bit disconcerting and slightly embarrassing to hear other people doing it and it was to avoid that embarrassment that I made the firm decision, which the Chief Justice referred to, some months ago that I would definitely not be having one of these farewell ceremonies.

But you learn one thing - or if you learn one thing as a general division judge - is that your decisions, no matter how wise or sensible they might be, are always susceptible to being overturned on review by a higher authority. As the Chief Justice, the higher authority in

this case was not the Court of Appeal or even the High Court but a much more powerful court. As the Chief Justice said, it was presided over by Raelene, although he joined on the bench and also put in his tuppence worth, as did - in a strange inter-jurisdictional piece of cross-vesting - Justices Siopis and Gilmour, who had recently retired from the Federal Court, put the weights on me as well.

And they made it clear to me that I had acted in excess of jurisdiction by making a unilateral decision not to have a farewell and returned the matter back to the original decision-maker to be reconsidered in light of the review body's reasons; here we are. The reversal of that decision was really based on the proposition that people said to me that, despite what this might look like so far, this is not actually about me.

Rather, it's about what the Honourable Michael Murray described in a lovely message which he sent to me, apologising that he was unable to attend today, as "an opportunity to publicly acknowledge the multitude of people who provide the support without which a judge simply could not function effectively". So that's what I intend to do and I'm grateful for the opportunity to do so. Before I do that though, I thought I would take the opportunity to answer the question that many people have already asked me and no doubt many more and that's, "Why are you retiring now when you could have continued on until you are 70?"

And as you can see from my boyish good looks, I'm nowhere near that. It's a very good question because I really enjoyed my 14 years as a judge. It has been a great honour to serve as a judge in - or it is a great honour to serve as a judge in this or any other court and it's an extremely important, interesting and challenging job. So even I have asked myself many times, "Why am I doing this?" My associate, Toni - and now today, my mother-in-law - I will say a little more about Toni later - they each thought that they had summed it up with a card which they gave me today or yesterday, which has on the front, "Goodbye tension, hello pension".

But in fact, there are a number of factors that have brought me to the decision to go. Partly, it's what the card conveys, at least the reference to tension. I've been practicing law in one form or another for 42 years and the thought of waking up and not worrying about some legal problem or not having my day mapped out for me in advance has some attraction. There's no doubt that litigation has become more complex in the time that I've been a judge and certainly since my days in practice.

Trials are longer, documentation is sometimes overwhelming and judges are required to digest, in a short time, information and material that teams of lawyers have been poring over for years. Long judgments are now commonplace and the work is relentless. So all of that, of course, is simply a product of the increasingly complex society in which we live and I don't want to be thought to be complaining about it but I have asked myself how long I can keep going with the appropriate level of commitment and enthusiasm and to the standard required, given the great importance of the work.

So that has had some influence on my decision. When I started as a judge, I resolved that I would always remember the stress experienced by a barrister appearing in court and certainly, I really felt it and I resolved that I would recognise that by being patient and understanding with counsel and even more so with litigants in person and I think, for a long time, I managed that - and I'm encouraged by what has been said from the Bar table today.

But in recent years, I think I've become a bit less tolerant and more impatient in court and that may be, in part, the product of the increasing pressure under which we all work or it may be that I'm just getting old and cranky. But it troubles me because I have always worked on the basis that everyone should walk out of a court feeling that they have been heard and understood and treated fairly, even if they've been unsuccessful.

If they encounter an impatient or grumpy judge, litigants will not have that sense of being heard or treated fairly and the faith in the legal system suffers as a result. So my occasional grumpiness makes me think it might be time to go. Another factor is that I have to go anyway in less than five years; I'm not retiring to start doing nothing. My mediation skills have been mentioned and I am available. But I wouldn't be retiring to do nothing if I was retiring at 70 either because a number of my siblings who are present here today demonstrate there's still lots of life after 70. So I'm not sure what I will be doing but it did seem to me that it might be easier to find a fulfilling field of endeavour in the next chapter of my life at 65 than it might have been if I waited until I was 70.

And finally, for a few years, I've actually been boring my colleagues here at the court with talk about retiring and in the end, I thought I would lose my credibility unless I stopped and actually did it. So I'm

going. But in doing so, I want to acknowledge how grateful I am that I've had the opportunity and the honour to serve as a judge in this court, in the District Court and the State Administrative Tribunal. So now I turn to acknowledging those who have made a significant contribution to my career in the law and particularly as a judge.

I've been particularly fortunate in being in enjoyable and supportive workplaces throughout my career. As Ms Cormann mentioned, I started my career in a firm then known as Northmore, Hale, Davy & Leake and I said at my welcome in this court that the place where a lawyer starts his or her career has an enormous influence on their values and their approach to practice throughout their career. I remain very much of that view.

The senior partners at Northmore Hale when I started were the late John Samuel, John Gillett - I don't think he's here tonight - Ian Temby, Grahame Young and Chris Pullen, who are both, I see, here today and I'm delighted that they are. They were joined in the partnership shortly afterwards by Bob Kronberger and Laurie Shervington and Stephen Edwards. They were all practitioners who maintained very high ethical and professional standards and those standards were instilled in all of us who came up through the ranks.

My name at Northmore Hale was a very happy one and parting was sad. I think it was a joke at my farewell dinner from the firm when they played Hit the Road, Jack as we walked in the dinner and I'm happy to say we still catch up once a month with all of those old partners of mine and have a beer down at the Captain Stirling. Those years at the firm coincided with my most active period in the Law Society and when I look back on my career, I remember that involvement very fondly.

The Society has an important role to play in the profession and in the administration of the law and I enjoyed being part of it. The Society continues to do great work and I hope that the profession continues to give it wholehearted support. I also enjoyed 10 years at Francis Burt Chambers, the whole of which was on the 23<sup>rd</sup> floor, which we all thought was the place to be. I'm delighted to see Mr Viner QC, who was our leader on the 23<sup>rd</sup> floor, who is at the Bar table today.

But I made a number of good friendships at the Bar and despite the fact that I did really find it a high-pressure existence, particularly after I took silk, I might say,

they were great years. Nine of the 14 years of my judicial life have been at the State Administrative Tribunal, as has been mentioned. It was a most satisfying time. That's because the tribunal and those appearing in it had a focus on the resolution of disputes rather than the much more adversarial approach that's taken in this court.

Unfortunately, Michael Barker thought that sitting on the Champs-Élysées sipping coffee was preferable to being here today, so I can't acknowledge him to his face but it was great to have worked with him and Judy Eckert in implementing Michael's clear vision for the new tribunal and then having the opportunity to carry on what he started and I am proud of what we achieved. Certainly, by the time I took over, the tribunal enjoyed a wonderful reputation, not only in Western Australia but throughout Australia.

That was evidenced by the fact that, when the Queensland Civil and Administrative Tribunal was being established, Justice Alan Wilson and Judge Fleur Kingham, the inaugural president and deputy president of QCAT, travelled to Perth to see how we operated. I know that they subsequently modelled many of their procedures on ours. I subsequently worked collaboratively on matters of common interest with Alan Wilson and Justice Iain Ross, who was then the president of VCAT during my time at SAT.

And while there, I was invited to address the select committee in New South Wales Parliament when they were planning to establish NCAT, the New South Wales Civil and Administrative Tribunal and I was invited to travel to South Australia to address a seminar of practitioners and government representatives when they were in the throes of setting up the South Australian Civil and Administrative Tribunal.

The reason that SAT was so successful was because everyone in the organisation - both administrative staff and especially the other judges and tribunal members - shared a common purpose, namely to resolve disputes quickly and as cost-effectively as possible, consistently with the requirements of fairness. Utilisation of members whose expertise was in fields other than law was important to the reputation and success of the tribunal.

I'm particularly delighted that Judge Tim Sharp and many of the SAT members with whom I worked are present this afternoon. It was a pleasure to work with you and I was sad to leave when I did. The last four and a half years, I've been sitting in this court and that too has been a great experience. It has been a privilege and pleasure to

have worked with the judged of this court. To a person, they are good company.

It's a hard-working court. For the last couple of years, I've managed the commercial and managed cases list, which involves the responsibility of distributing new cases to the CMC judges. The willingness of the judges to take on files without complaint, despite the pressures that they might be under, has made that job much easier and there has always been a willingness for everyone to chip in and help out. I've never encountered any difficulty in obtaining advice or counsel from my colleagues when I have needed it.

I would like to acknowledge the great work of the administrative staff, who toil away largely behind the scenes to make the court function. Unfortunately, as I said at the start of morning tea this morning, we judges tend to go between our chambers and the courtrooms and most of the contact between judges and administrative staff happens through the judge's personal staff. As a result, we get too few opportunities to acknowledge and thank the staff for the work that they do.

It is a fact, however, that the court could not function without the good work of the administration and for that, I thank them. I would especially like to thank the Chief Justice's personal assistant, Christina Curtis, and Jenny Spence for their assistance in organising this sitting and the chief orderly, Stan Carvell, for making all the arrangements for the drinks upstairs afterwards. Just as the court could not function without the efforts of the administrative staff, the judges could not function without the work of our personal staff; the associates, research associates, orderlies and secretaries.

I've had great assistance from a number of secretaries since I came to this court; most recently, Jenny Spence and Rebecca Nairne, who have shared secretarial duties for me. Before that, I was looked after by the challengingly named, Notre Dame Sayez Gomez Galatza, better known as Dream and then by Alison Heutschen. All of them have struggled to come to grips with my handwriting but they've never complained; all of them have done work at the highest level. My judgments have always looked pretty, although I've found that doesn't carry much weight with the Court of Appeal.

I've also had assistance from a number of associates and research associates; all but one of those have been graduates on short-term appointments on their way to practice as lawyers. Since I moved to this court, they've

been Angela Mill, Michelle Linehan, Katy Batty, Jim Leacus, Nick Werner and Amelia Devlyn. They all helped me greatly, for which I thank them. They were all seriously bright and I will follow their careers in the law with interest.

I would also like to thank Denise Pavlinovich, who stepped in to help me through the last couple of months after Justice Vaughan snaffled Amelia Devlyn away from me as his associate. The one associate who is not a law graduate but who has conferred on herself the well-deserved title of number 1 associate is Toni Sherwood, who's sitting in front of me for one last time this afternoon.

Toni was my original associate when I joined the District Court in April 2004. She moved with me to SAT and then to this court. She has taken a year off here or there to have her two charming boys, Kane and Bodhi, but otherwise, she has served me loyally and brilliantly for the whole of my judicial career. When someone new has joined my personal staff, she has quietly taken them aside to tell them how to look after me and trained them up so they took no time at all to learn the ropes.

She has always been a popular member with the staff and with other members of my personal staff. Toni is so loyal that, until a little while ago, I was confident that she would, as they say, take a bullet for me. I had to rethink that a while ago in the occasion that has been referred to by Mr Howard, when I was delivering some oral reasons, which I thought were clear and concise and very acceptable, to a rather unhappy self-represented litigant. Toni was sitting between me and the litigant then he decided to give me some feedback by trying his cup of water at me and he hit me square in the face. Remarkably, despite being in the direct line of fire between and the litigant, Toni did not get a drop of water on him. I realised then that she was actually too smart to take the bullet. One of the things I will most - miss most in retiring is working with Toni.

Finally, I want to acknowledge the unwavering support of my family during my time at the Bar and as a judge. No secret that working as a barrister and as a judge is demanding and at times all consuming. Raelene and the children have tolerated that without complaint and provided me with a focus away from work which made the pressures of the job bearable. I'm very proud of our children. They're all adults now. Dan is a lawyer in London, Tim is a teacher at Christ Church, Ellie has a radio breakfast show in Victoria and Livie is a nurse at Royal Perth Hospital.

I'm pleased that Daniel and his partner, Mia, and Ellie will be able to watch this ceremony on the court's website. I've always been haunted by that great Harry Chapin song, *Cats In The Cradle*. For those of you who are too young, I have to look at the associates up the back there, to know that song, it's about a father who's too busy to find time for his son until he gets old, by which time the son is too busy to find time with his father and the song goes, "He has grown up just like me".

I was always worried that I might fall into that trap and suffer the consequences. Last night, Tim and his fiancée, Bianca, and Livie, presented me with a fantastic retirement gift, which all the kids had bought for me. Tim made a little speech in which he said that they wanted to get me something because they wanted to acknowledge their appreciation that, to use his words, "The effort that I put into my work had contributed to them having almost all they have".

But they look back on my working life as a positive thing for them is perhaps the most pleasing thing that anyone has said to me on my retirement. I thank them for their unending support and I now that, to use the words of Harry Chapin's song, "We will get together soon and we will have a good time then". At my welcome to this court nine years ago I said a number of things about Raelene. One was that she was given to bursting into tears at the slightest (indistinct) sentiment.

It is one of her most endearing traits. I've got here, "Remains true", but I didn't need to say that. So I need to tread carefully in case she dissolves completely into tears. Another thing I said is that I look forward to coming home every night to be with her. That also remains the case. For me, one of the great attractions of retirement is that I can now spend much more time at home. I'm not sure, however, that Raelene shares my enthusiasm. I began to suspect that she didn't when she gave me a voucher for six golf lessons for my birthday.

But those suspicions were greatly increased when a few weeks ago I - she enthusiastically messaged me from the Red Cross where she does a lot of voluntary work, to tell me that she had found a couple of perfect post-retirements for me. When I got home she told me that one of the jobs is in Myanmar and the other is in Palestine. The Palestine job involves putting on a Red Cross vest and accompanying children as they walk to school in case they get shot at. I am sure that she will get used to having me around more and may even get to like it. Time will tell.

But in the meantime I can't wait to see what's for lunch on Monday. However that may turn out, there's no changing the fact that Raelene has been my rock and my source of joy and happiness for the last 32 years that we've been married as of yesterday. Her support and love has been unwavering and has enabled me to have an enjoyable and fulfilling career, and I'm deeply grateful to her. I'm very honoured by your attendance here tonight. I was terrified that nobody would show up. For that reason I invited the No Lycra Cycle Club members, because I know they will go anywhere for a free beer. But I am deeply honoured by all of your attendance and I thank you for giving me the honour of being here.

**MARTIN CJ:** Thank you, Justice Chaney. That concludes this evening's ceremonial sitting. The court will now adjourn.

AT 5.24 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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