

THE SUPREME COURT OF
WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE EDELMAN

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 25 JULY 2011, AT 9.30 AM

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MARTIN CJ: The Court sits today to welcome to the Bench his Honour Justice James Edelman, who took the oath of office as a Judge of this Court at Government House last Friday. I would like to particularly welcome this morning members of his Honour's family, including his wife, Dr Sarah Percy, their two children, Tatiana and Jonah, his Honour's parents, Dinah and Ray Walker, his Honour's sister and her husband, Talia and David Marsh, and his nieces, Eva and Elizabeth. I would also like to extend a very warm welcome to his Honour's many special guests, including two who have flown from England to attend the ceremony this morning, Prof Timothy Endicott, Dean of Oxford Law Faculty, and Mr Simon Colton.

I would also like to especially welcome his Excellency the Governor, Mr Malcolm McCusker AO QC, and Mrs Tonya McCusker. Your Excellency is, of course, no stranger to this Court but it is a particular pleasure to welcome you upon the occasion of your first visit in your new capacity.

I would also like to welcome Justice Tony Siopis and Justice Michael Barker of the Federal Court of Australia, his Honour Judge Peter Martino, Chief Judge of the District Court of Western Australia, his Honour Judge Denis Reynolds, President of the Children's Court of Western Australia, Mr Rob Mitchell SC, Acting Solicitor-General, Cheryl Gwilliam, Director-Director of the Department of the Attorney-General and many other distinguished guests too numerous to mention including, of course, former members of this and other courts.

I would also like to particularly welcome those who will address the court this morning, being the Honourable Christian Porter MLA, Treasurer and Attorney-General of Western Australia, Dr Christopher Kendall representing Mr Hylton Quail, President of the Law Society of Western Australia, and Mr Theo Lampropoulos SC representing Mr Grant Donaldson SC, President of the WA Bar Association.

Your Honour Justice Edelman is exceptionally well-qualified for this appointment. Your career to date has been one of outstanding achievement in both academy and in legal practice. You graduated in economics and in law, the latter with first-class honours from the University of Western Australia. You also obtained a degree in commerce from Murdoch University before serving as associate to his Honour Justice John Toohey in the High Court of Australia and it is therefore particularly pleasing that the Honourable John Toohey AC and Mrs Loma Toohey are able to join us this morning.

Your Honour was awarded the Rhodes Scholarship for Western Australia in 1998 and in the same year was admitted to practise in Western Australia after serving your articles at Blake Dawson Waldron. Your studies at Magdalen College, Oxford led to the award of your doctorate in 2001.

Since then you have combined an academic career with active legal practice in both Western Australia and England. You took up a teaching position at Keble College, Oxford in 2005 and were awarded the chair of the Law of Obligations of that college in 2008. At the same time, however, you maintained active practice as a barrister in Western Australia working out of the Chambers of his Excellency Mr Malcolm McCusker both in your own right and on occasions in conjunction with his Excellency and in that role you appeared in all relevant courts within Western Australia and on a number of occasions before the High Court of Australia.

Since being called to the English Bar in 2008 you have also maintained an extensive practice at the English Bar, having appeared in and given advice in relation to a significant number of major cases in that country.

Despite your teaching and professional obligations, your record of publications has been prodigious and includes the writing and editing of six books on topics which range from damages to unjust enrichment and restitution, equity and tort. You have also published more than 80 articles, notes and reviews on topics spanning a wide range of legal issues and served as editor, adviser or review editor on a number of law journals. Your academic work has been cited and relied upon by superior and ultimate courts in a number of common law jurisdictions around the world.

According to the web site maintained by Keble College, your research interests include unjust enrichment and restitution, equity and trusts, contract, torts, Roman law, legal history and criminal law. I regret to advise that there will be little opportunity for the application of your expertise in Roman law during your time on this Bench, but the varied work of this Court should otherwise match the variety of your many interests in the law.

At the time your appointment was announced, attention was drawn to your relatively young age. It was asserted that you would be the youngest person ever to be appointed to this Bench. Unfortunately, that assertion is not strictly correct as Sir Lawrence Jackson was appointed a Judge of this Court in 1949 at the age of 36 although he was also appointed President of the Arbitration Court at the same time and initially served in that capacity. Your age of 37 is not so different from others who have been appointed to this Court, including Frederick Moorehead and Sir Albert Wolff, who were each appointed at the age of

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39 in 1902 and 1939 respectively. 39 is also the age at which Chief Justice Robert French was appointed to the Federal Court of Australia, and Sir Edward McTiernan was appointed to the High Court of Australia at the age of 38, so if it is your ambition to beat that record, you will not be serving very long on this Bench.

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However, if you do remain on this Bench for the entire period of judicial service available to you - that is, until age 70 - your service of 33 years would be the longest time ever served on this Court.

It seems to me, however, that the more remarkable thing about your age is not whether you are the youngest or will serve the longest but, rather, the extraordinary achievements which you have accomplished in such a relatively short time and which I have only summarised in the briefest of terms. I think we have every reason to expect that that remarkable record of achievement will continue during your career as a member of this Court.

It might reasonably be assumed that those achievements have left little time for anything outside the law. However, that assumption would be wrong as despite your many commitments, you have nevertheless found time to provide your energies and skills to charitable work, serving on the boards of two significant charitable foundations, and of course we should not overlook your commitment to the raising of a young family with your wife Sarah. It is my particular pleasure on behalf of the Court to welcome your family into the community of the Court.

But it seems that your commitments have left you with little time to take an active interest in team sports.

President McLure has insisted that I work mention of yesterday's derby into these remarks, and I can do so by observing that you are one of the few people in this city who could approach yesterday's game with equanimity, having no particular interest in either side. I am also reliably informed that your father-in-law who was born in England but has spent his adult life mostly in Canada laments the fact that his daughter managed to find and marry the only Australian male with no interest in either cricket or Rugby which are two of his passions.

I have mentioned your prodigious record of academic publications. As I am sure you are well aware, your future writings will mainly be of a somewhat different character. In academic circles, there is a tendency to regard the volume of written work as a measure of achievement. In judicial circles the opposite is true as brevity and economy of expression are highly valued. There are I think many in this room who would consider that I am not particularly well placed to make this point and that my own writing, valued on the scale of brevity, does not score very well but brevity remains a worthy aspiration and it is a good idea to remind ourselves of that objective from time to time.

Your future writing will also be reviewed in a rather different way by intermediate and ultimate Courts of Appeal. The eyes of those Courts will not be directed to

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the identification of legal principles upon which they can rely but, rather, towards the identification of error. This is of course a burden we must all bear as the prospect of appellate correction is one of the enduring strengths of our judicial system.

The appointment of a Judge is always the subject of comment, both informed and uninformed. The advent of the blogosphere has meant that there is now an indelible record of comments which come within both descriptions. My brief visit to the blogosphere following your appointment showed that many who inhabit that strange netherworld recognise the value of appointment to the Court of someone with your Honour's proven capacities. Others, however, thought it regrettable that Lord Chief Justice George Jeffreys of the Bloody Assizes was no longer available for appointment, having been dead since 1689.

It was apparently thought that the appointment of Justice Jeffreys would provide some appropriate benchmarking in the area of sentencing. That commentator appears to have overlooked the fact that Jeffreys was renowned as a barbarous and foul-tempered loud-mouthed bully. After James II fled the country in 1688, Jeffreys was placed in the Tower of London, according to some reports for his own protection, according to others under arrest, but in any event where he died of kidney disease a year later at the age of 44. I think we have done rather better with your Honour's appointment.

It only remains for me to express on behalf of the entire Court our congratulations upon your appointment and to again welcome you and your family to the community of the Court. We very much look forward to working with you in what we hope you will find to be a long, enjoyable and fulfilling career as a member of this Court. Mr Attorney?

THE ATTORNEY-GENERAL: Your Honour, may it please the court. Your Honour, last Friday was your Honour's ceremony of the official taking of oath which your Honour took before the new Governor, his Excellency Mr Malcolm McCusker AO QC. That ceremony was likely notable for both the oath giver or the Governor who administered the oath because of the fact that your Honour had spent some time previously in the legal apprenticeship of his Excellency.

Today is your Honour's ceremonial welcome to the Court itself and while not intending to retread the field of acknowledgments offered by his Honour the Chief Justice, I would also like to note the presence of another person with whom you spent some time as a junior lawyer, being former High Court Justice John Toohey AC, who is also no doubt pleased to be here in attendance today with his wife Ms Loma Toohey.

Ceremonies like this, your Honour, are momentous days for the direct participants. In coming to prepare something to contribute to this ceremony, in circumstances where I know personally the participant perhaps a little better than some who have been the subject of other such ceremonies, I was struck by a sobering thought: regretfully in experiencing a fair many ceremonies of this general type, there may be perhaps inevitably a tendency to lose through repetition just a little sight of their real gravity. In anyone's defence it can be noted that there have been many ceremonies of this type over the last two and a half years; but what should not be lost sight of - the reason why these ceremonies are so important - is that they are one of the very few occasions in what are often very long careers where our society recognises the sacrifice of those choose high public service.

We all live in a modernity where the value of leisure has reached a sort of pre-eminence. The pursuit and enjoyment of leisure was a concept far from dominant in the lives of our forebears but it has not gone from being ancillary to going beyond even a first among equals status in modern values. It now sometimes appears something near the ultimate aim of a modern life.

High technology and comparatively high modern incomes see a vast middle class able to enjoy leisure of a type that was barely imaginable even 50 years ago before the real growth of the consumer society. Now life can be one of travel and of regular holidays and of the consumption of endless forms of entertainment delivered straight into the centre of modern homes, outside of which are parked cars capable of driving almost anywhere and boats capable of fishing for almost anything. All this means that true leisure is no longer the province only of tycoons but part of the lives of millions of Australians.

This is not to say that some do not fare better than others or to deny that those that enjoy modern leisure opportunities do not work hard for it, but your Honour has now chosen a life where the great irony is that your work will be remunerated just sufficiently to allow participation in modern leisure but whose intellectual demands are such that the time available to enter the field will be seriously restricted. Your Honour will experience now true time poverty.

One of the points I would like to make briefly is about remuneration. I would like to add that ceremonies such as this also stand to recognise not merely the willing sacrifice of some to give up a large part of the modern gift of free time, but also to recognise the sacrifice of those who choose to pursue intellectual service of the public at the opportunity cost of far greater levels of material wealth which they would assuredly achieve if not tied to the public service of the bench.

If you had chosen a career in the law, there are fewer positions which apply more limitations to your intellect's ability to earn wealth than becoming a Judge. For your Honour to have achieved what you have and to be joining the company which you are, you, like all your fellow Judges, will have made a range of sacrifices which are difficult for many people who have not experienced the pursuit of legal excellence to understand.

In choosing the law, you have chosen to commit to a profession where nothing ever comes easy; a profession whose sacrifices are measured out in invites declined, holidays missed, social events with friends foregone, and time with family sacrificed, all to allow time for the sometimes inhuman amounts of reading, writing and arithmetic that, without which, the engagement in the career is made fruitless.

In choosing the judiciary at a young age, you have chosen to spend the most productive years of your legal life at comparatively cheap hourly rates in the service of a public sometimes quicker to jump to criticism than they are to allow time for enhanced understanding.

It has always probably been much this way and likely always will be, but still people put themselves through the rigours of a legal career and then when the material rewards are at their potential peak, they put themselves forward for judicial service. The entire Government is very grateful for this fact. It likely occurs because those that choose such a life make choices based on their combined love of the law and their understanding of the importance of public service.

Of course the sacrifices made for a love of the law are not borne by the legal romantic alone. It is the immediate family who share that sacrifice. Parents of the legally committed have more communications with their in absentia adult children via telephone than time with them face to face. Children have immensely busy dads and mums who probably miss more than they would like, and partners have other halves who make unreasonable demands.

One such unreasonable demand is asking a wife to relocate around the world, in this case to a place whose universities, with qualities good though they may be, are probably not, in truth, the world's academic epicentre in the study of the effect of mercenaries of geopolitics and regime change. So today to Ray and Dinah and Tatiana and Jonah, and above all to Sarah, thank you for being present today and for your past and future forbearance.

As to you, your Honour, these occasions tend necessarily to the CliffNotes summary version of the subject of the ceremony. One or two salient features of their life and character are the subject of short comment. That is necessarily so and my brief observations will be no exception, save that I would like to take just a little time to note that to pick one, two or even three features of your Honour's life to date is to seriously belie the fact that your Honour appears, to me at least, at times to be a wildly variant and sometimes chaotic mix of interesting and unusual features.

Your Honour is many things. Your Honour is highly intelligent with a prodigious capacity to produce the written word and to absorb written information. Your Honour was, and I begrudgingly admit to a limited extent still is, a very capable athlete, although not in team sports. Dare I say this: both in your pursuits on the track and off the track in the profession, your Honour also possesses something more than just a touch of the healthy competitive spirit.

Extreme competitiveness as a character trait can be both a blessing and a curse at times. For you the curses are probably best the subject of extra-judicial comment, by which I mean to say the stories of the trouble competition has caused you from time to time are best told well away from here.

As well as being remarkably switched on to the world of law, literature and language, your Honour also has a touch of what can best be described as "the vague", specifically when it comes to the practical day-to-day aspects of living. A close engineering friend once described it to me as a complete lack of mechanical, biomechanical and ergonomic sympathy.

By this I think he meant to convey a remarkably smart person who is also a less than proficient driver; who is completely incapable of reading any sort of map; someone who is also not so good at cooking or shopping or cleaning the house; in fact someone very bad with following the practical rituals of day-to-day life generally.

This person might be finally described as someone who gains the trust of their very young Canadian wife, convinces her to come and live for the first time in Western Australia having been told that this will only occur if he first reconnoitres and achieves two conditions precedent attaching to accommodation - something which is cool in summer and which has a modern kitchen - and then that same person rents, unforeseen by said wife, a third-storey 1968 apartment built in single brick with no airconditioning and a kitchen that looked like it was bought second-hand from Pioneer World. Sarah, at least it was close to the surf club.

Acknowledging your Honour's eclectic nature, three things specifically in the context of your Honour's present appointment are, however, worth some very brief specific comment. Your Honour is three notable things: your Honour is young; your Honour is an academic and your Honour is Jewish. In other less serious settings, that may sound like the beginning to a good "man walks into a bar" type joke, but in mentioning these three things, I do not suggest that any one of them defines you in a dominant or even a pervasive way, but they are each interesting and relevant.

One of these three characteristics has of course carried with it historically, and sadly to some extent persisting in modern times, the spectre of an unedifying prejudice. To some extent, even the liberal-minded Western Australian society and its legal profession have not been entirely immune from the penetration of such prejudice. Thankfully now, however, being an academic is no longer a barrier to high judicial office.

We have not yet quite turned the corner that would allow your Honour and his Honour Justice Simmonds to begin plans for a thorough-going academic takeover of the Court. Even allowing for both your Honours' academic records, my political experience tells me that a power-base of two is not enough for a coup but it is a start.

As to being Jewish and being slightly more serious, I think the records show that WA has remained substantially uninfected by the prejudice so often and so unfairly allocated to Jewish people. In fact in the 1930s a Jewish exiled Russian politician Isaac Sternberg proposed to purchase the entirety of the Durack properties of the West Australian Ord River area as the basis of a community of Jewish refugees fleeing Nazi persecution. This is a little known part of West Australian history. Indeed he had actually convinced the then State Government of the merits of the plan. As has been so often the way, it was only the narrow thinking of the Commonwealth which thwarted the endeavour. So much may have been so different had that plan succeeded.

Inside the general Western Australian society, the WA legal profession has been at its inclusive best in embracing and promoting Jewish lawyers. This has been a jurisdiction in which Jewish lawyers have thrived and have made great contribution. It is beyond the time constraints to detail here the enormous contribution of Jewish lawyers to the Australian, and particularly the West Australian, legal profession but I know that it will not be lost of [your Honour that you now carry some added responsibility in being the newest part of this great tradition.

Finally, your Honour, yes, is young - as has been noted, not the youngest ever appointed to this Court and indeed you were not the youngest ever appointed to your previous role as Full Professor of Law at Oxford. I am reliably informed that one Robert Chambers was appointed Vinerian Professor when he was 29 in 1766. For such a competitive person as your Honour, I am sure that must really hurt, even after all these years.

I would also note that with respect to Justice McTiernan's appointment at 38 to the High Court it took a full successful national referendum and a subsequent constitutional change to have Justice McTiernan take the final step in his long legal career. Perhaps by 70 your family will be happy for the fact of that referendum.

The combination of your relative youth and your well-known competitive streak in your new position will pose some advantages and some disadvantages. As to the advantages, I would respectfully suggest that your Honour will be the fittest and most athletically-gifted person on the Supreme Court and indeed on the combined District Court and Magistracy. I know this for a fact because I once was witness to a cricket team in which his Honour Judge Mazza played. My advice to your Honour is to subtly advocate for the replacement of the once a year intra-Court judicial bowls tournament with a half Ironman. I guarantee that your Honour will do well.

Your Honour, there will be mistakes. Based on my own recent experiences amongst much wiser heads, these mistakes can be painful and humbling, and sometimes both. Your capacity to learn which is prodigious and the capacity of the Chief Justice which is well-known, with that of your colleagues to guide and foster, will see you through whatever challenges lie ahead. Ultimately the reason that you are here is that despite your age, you have done and achieved a staggering amount with the promise of much more to come and you are warmly welcomed by the State of Western Australia, your Honour. May it please the Court.

MARTIN CJ: Thank you, Mr Attorney. Dr Kendall?

KENDALL, DR: May it please the Court. On behalf of the Law Society of Western Australia, it is indeed my very great pleasure to welcome your Honour to the Supreme Court. Your Honour has had a long and active history with the Society, and I am delighted to appear today on behalf of all of our members to celebrate with you on this very special occasion.

Your Honour, those who know you, those who have worked with you, those influenced by your quite startling body of published writings and those who have benefited from your considerable skills as an advocate applaud this

appointment. Your Honour comes to us with a professional pedigree that is indeed hard to match, one that will benefit both the Court and those who appear in it and before it. We congratulate you on an appointment that recognises your considerable accomplishments and look forward to watching the further development of a legal career that has proven exceptional in every conceivable way.

Your Honour, as has been mentioned, every judicial appointment inevitably brings with it questions about the suitability of the judicial candidate. Is he or she up to the task? What will they be like to appear before? Why did they get the job? And, interestingly, why on earth would they even want it?

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Having had the opportunity to review your Honour's curriculum vitae, I daresay that in response to at least some of these questions there can be few, if any, in this room today who would question an academic record that is, frankly, as good as it gets and a publishing record that gives new meaning to the word "prolific". Add to that a record of oral advocacy that others would do well to emulate and what we get today is a judicial officer that other jurisdictions would, I suspect, very much like to clone.

I note that your Honour's appointment has raised a number of questions that as far as I can tell focus on age and background. To be blunt, two words appear to keep popping up; "young and professorial". In relation to the former, that being age, I will not repeat what the Chief Justice has already said. Other than that as a patents barrister I can assure the Court and those in attendance today that there is, as of yet, no patent filed for any technology that allows us to fast-forward biological degeneration. We are what we are and there is really very little we can do about that. Nor would we want to, particularly when the judicial candidate in question has crammed more into his 37 years than most have or will in a lifetime spanning 90.

That, of course, brings us to "professorial" and "professorial tendencies". There are more than a few law professors who have gone on to excel as judges.

US President William Howard Taft was a Professor of Constitutional Law at Yale Law School until he resigned to become Chief Justice of the United States. He seems to have done quite well for himself.

Richard Posner, after publishing 40 books - (Your Honour still has a way to go!) left the University of Chicago to take up a seat on the United States Court of Appeals for the Seventh Circuit. He served as Chief Judge of that Court from 1993 to 2000. Few have ever questioned his outstanding career as a Judge.

In this country Paul Finn left his position as full Professor of Law at ANU to take up a position on the Federal Court in 1995. His books, *Fiduciary Obligations*, *Law and Government*, *Equity and Commercial Relationships* and *Essays on Law and Government* do not appear to have made him "too academic" for the task at hand.

And the list goes on. But what of this candidate? Can he, will he, follow in the steps of these and other exceptional judicial role models?

The answer, I daresay, is a resounding yes, and anyone who seeks comfort in that regard need only look at his Honour's curriculum vitae. It is, as we have just heard, rather daunting to those of us who are mere mortals.

There is so much that is noteworthy: a doctorate, six books, 80 Law Review articles, a full professorship at Oxford and briefed as junior counsel on matters that are, I am sure, the envy of many who are here today.

Your Honour, yours is a career that very few can seek to match. It makes you a judicial candidate of the highest order. But what of this word "professorial"?

In reviewing your Honour's curriculum vitae in preparation for today's sitting, something that I could not help but notice, and which I believe merits comment because it is indeed relevant to the judicial role, are your Honour's two excellence in teaching awards received during your time as a Professor at Oxford.

There are many who claim to teach, some who claim to do it well, but very, very few who actually excel at it. To do so is to know that you have the ability to engage an audience and to capture the imagination of those wanting to learn. It is to know that you have excelled at communicating with clarity. It is to know that you possess the ability to make the complex straightforward, the mundane exciting, the theoretical real and relevant and worthy of hard study and analysis. It is to know that you have the gift of a commanding voice worthy of respect and very much in demand.

In law it means you are blessed with the ability to inspire those wanting to learn, to ignite a passion for the law and learning and to encourage a commitment to justice that is at the very core of all that we all do as lawyers. It is to know that you, as a mentor, give those students who are before you a more sophisticated, intellectually rigorous and critically focused sense of the role of the law in the world in which we all live. It is to know that, through communication, you play a quite extraordinary role in shaping the lives of those who in turn will one day determine what the law says and does not say about the society in which we live.

Your Honour, to do this well is one thing. To enjoy it is quite another, but to do both and be told by those you teach (those who will follow you) that you excel at all of this, that you make learning relevant, well, this is a truly remarkable gift and one for which your Honour can be and should be rightly proud.

But these skills do not end at the termination of a professorship. They are not confined to academia.

On the contrary, what one needs to excel at teaching (that is, an ability to clearly express the form and relevance of the jurisprudence that guides us and that makes us a model of democracy in all that we do) are precisely the skills that will make your Honour a Judge of this Court who will, we have no doubt, be much admired,

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much respected, much appreciated and emulated. For at its core the judgments handed down by any court act as a guide, a flow chart of what can be done and what cannot be done. In sum, they teach. They teach those who rely on them, those whose lives are changed by them and those who seek to use them as precedent, as historical evidence of what the law means and what it does not mean.

In this Court we are fortunate to have before us today a collection of some of the finest teachers this State, indeed this country has to offer. Their writing, their clear pronouncements on the difficult, ensure that those of us who represent those who seek a fair hearing know what is and is not expected of us and what our clients can and cannot expect.

Your Honour's skill set, your ability to excel at all that you do, make you ideally suited for the tasks that lie ahead. Your appointment to this Court is a recognition on the part of the Government that appointed you and those who supported that appointment of your considerable achievements and how those achievements benefit the Court and the society it affects.

It recognises that in you we have a teacher, an advocate and a role model in every sense of the word. Your proven ability to listen, to explain and, as I have said, to guide, will serve you and this Court well. All of us will, it is clear, benefit from the qualities you bring to this, your new role.

Of course, your Honour, no welcome address would be complete without some comment on one other word that is often used in these ceremonies: judgment. How does one define good judgment and how do you know if a new Judge will demonstrate it?

In that regard I note only that your Honour has chosen a Canadian as your spouse and life partner. What more needs to be said about excellent judgment? They are indeed exceptional people, these Canadians: intelligent, warm, kind, and fiercely committed to their partners' careers. But enough about me ...

If I might take this opportunity, I would like to extend the Law Society's very best wishes to Dr Percy, Tatiana and Jonah. To Dr Percy, we thank you for agreeing to move your career and your family to Perth. This is no small ask but I dare say it is one that is very, very much appreciated. Perth may not be Vancouver, Toronto, Edmonton or Montreal - actually it's more like Lethbridge - but it is a city where you will be warmly received and made to feel welcome, and again we thank you for making all of this possible.

In closing, your Honour, it is my very, very great pleasure to congratulate you on this, your most recent accomplishment, and what an accomplishment it is. I know I speak for all here today when I say that your appointment as a Justice of the Supreme Court of Western Australia has been met with much enthusiasm. On behalf of the Law Society, I congratulate you and wish you all the very best as this Court's newest member. May it please the Court.

MARTIN CJ: Thank you, Dr Kendall. Mr Lampropoulos?

LAMPROPOULOS, MR: If it please the Court. Grant Donaldson can't be here today. He is currently overseas spreading goodwill. I am pleased to be here in his place representing the WA Bar Association because these occasions are always special. Mind you, the appointment process does not always go smoothly, as an email your Honour recently received illustrates. I hasten to add I did not obtain a copy of this email from News of the World. The source was

much closer to home. The email, which is marked "urgent" and headed "Re your appointment" is from Colin Edelman QC, a leader of the London Bar. The email starts well enough:

Dear James, we haven't met but from one Edelman to another, congratulations. I am very happy for you. There is, however, something of a problem. I hear that your new style will be "the Honourable Justice Edelman". Some of my friends and clients have already asked me why I am going to Australia. I am concerned that your style will make people think that it is me and not you who is taking the Queen's shilling. Indeed, it's fair to say that I don't think that anyone would assume that "the Honourable Justice Edelman" is you and not me. After all, to be appointed a Judge below the age of 40 is unusual.

The email goes on:

It's one thing for a legal system to ditch wigs, but quite another to make short trousers compulsory. I am therefore writing to ask you to prevail on the Court to put out a statement to the effect that the new Judge is James Edelman, ie, you and not me. I am determined to ensure that the name of one of the leading members of the English Bar is not confused with the name of a junior Judge recently appointed to an unknown Court in a faraway country of which we know little.

Well, your Honour was on the verge of complying with the request when your wife suggested you telephone Colin Edelman to discuss the matter and it was only when your Honour called the number in the email that you realised that the email was in fact a prank perpetrated by your colleagues at the London Bar and that Colin Edelman doesn't even exist.

In reality, of course, your London colleagues are indeed impressed with your Honour's appointment to the Supreme Court and it is a measure of their respect that they went to all that effort to set up the prank.

Other speakers have already canvassed your Honour's remarkable professional and academic achievements in a short space of time and there is no need for me to repeat them. They really speak for themselves. Quite apart from your Honour's academic achievements and experience at the Bar, your Honour obviously has an enormous capacity for work, which I expect the Chief Justice will be eager to harness.

I am sure that your Honour will make an enormous contribution to this Court and on behalf of the WA Bar Association I take this opportunity to wish your Honour all the best in this, the next stage in your Honour's legal career. May it please the Court.

MARTIN CJ: Thank you, Mr Lampropoulos. Justice Edelman?

EDELMAN J: Your Excellency, Chief Justice, fellow Judges of the Supreme Court, Judges of the Federal Court, Chief Judge of the District Court, President of the Children's Court, Honourable Attorney-General, Dr Kendall, Mr Lampropoulos SC, other distinguished guests, members of the profession and the Academy, my family and friends who are able to be here today, my sincere thanks to you all for your presence here this morning.

I am honoured by the number of people who have taken the time to attend this ceremony and by the very kind words spoken this morning. I am also extremely humbled to join this distinguished Court today surrounded by Judges for whom I have the utmost respect and alongside whom it will be an honour to work.

My first life in the law from the time of entry into Law School has been 19 years. Unless statutory retirement ages are amended, I hope that my next life in the law will be 33 years. At the close of this first life I want to say a few words about four particularly significant influences which will, I hope, shape my future and my role and performance as a judge. The first three are individuals, and exceptional lawyers, they are a Judge, an academic and a practitioner. I will speak last of the fourth and the most important influence.

The Judge was the Honourable Justice Toohey, now the Honourable John Toohey AC. It's a source of great pride for me that John is here today. I began legal practice by working as the associate to Justice Toohey and he and Loma have been kind and supportive friends ever since. To this day I cannot imagine a better way to have begun my career and I hope to emulate his model with my own associates.

John was a brilliant Judge who has an extraordinary sense of empathy, humanity and patience. During my year of working with him I raised many questions, made many suggestions and assertions. They were invariably proposed with the conviction that Voltaire described as an absurd state of absolute certainty. More fundamentally, they were often wrong. Yet no matter how wrong-footed, John treated with sincerity and respect every question, every suggestion and every assertion, and both in and out of Court he treated everyone with tolerance and with dignity.

In all the time I have known him, only once have I ever seen any sign of a limit to his tolerance. In early 1997, shortly after I had commenced work for John, he was without a car for a week. He asked me for a lift home from work. My car was a second-hand Suzuki Sierra soft top, but the soft roof was so worn out I had thrown it away. I had taken to driving in a raincoat whenever it rained.

Unfortunately it had been raining earlier in the day, but the skies had cleared and when John asked me for a lift I didn't raise any concerns. It hadn't occurred to me, and it certainly hadn't occurred to John, that the passenger seat in my car had been absorbing water for quite some time. It did occur to us both simultaneously when there was an audible splash as John sat down in his new suit.

The journey was almost entirely silent but John remained utterly polite and, as he alighted from the car dripping from the waist down, he thanked me for the lift. The only sign of a limit to his patience and respect is that he has never asked me to drive him anywhere again.

A second significant influence in my legal life was the academic influence of my doctoral supervisor, the late Professor Peter Birks. Peter was the cleverest person I had ever met, and the most passionate about law. His intellect was driven by his passion for the law almost to the exclusion of everything else in his life. He had an absolute commitment to legal truth as the derivation of practical reason.

As one of my colleagues at Oxford once said, arguing with Peter about law was like playing a game of chess with an opponent who was always one step ahead. Even when you thought you had wiped almost all his pieces from the board, you would blink and find yourself checkmated by his pawn. Peter would work around the clock and his devotion to students was legendary. Keeping student hours, I would often send him emails around 2 or 3 am. If they concerned a matter of law they would always receive a near-instantaneous reply. If the legal issue was one of any difficulty, the reply could be pages long. The emails and the debates continued long after I had concluded my doctorate.

The third influence is a former practitioner: his Excellency as he now is, Malcolm McCusker AO QC. When I returned from Oxford in 2001, I spent almost 10 years in Chambers with Malcolm. Although only three of those years were based in Perth, over the last decade we have discussed, debated and analysed hundreds of cases in which either of us was instructed, and I have had the privilege to appear as his junior on many occasions.

To use a sporting simile close to my interests, Malcolm was the Trevor Hendy of advocates. He made every case beautifully simple. His appearances were confident and easy. However, like the magician's sleight of hand, his short, elegant submissions concealed the 3 am starts, the late night preparation, the agony over the best way to present his case, and all of the drafting and redrafting.

A judicial equivalent of Malcolm was Sir George Jessel. Sir Arthur Goodhart once estimated that a published index of the decisions which Sir George delivered in the 10 years he sat as a first instance Judge in Chancery would run to 500 pages. Of those 500 pages of decisions every single decision was delivered extempore. But behind the appearance of Sir George's absolute effortlessness was his devastating and relentless industry. Still, I doubt whether Sir George could have paddled a surf ski like Malcolm.

As a Judge I hope to draw from these three exceptional individuals with whom I have been so privileged to learn so much. In an early iteration of Ronald Dworkin's now complete theory of interpretivism, Dworkin famously used the metaphor of the perfect Judge, Hercules, who had the right answer to any legal problem. The Hercules of my vision of law would not merely deliver the right answer but would do so with the wisdom and the patience of John Toohey, with the passion of Peter Birks and with the practised effortlessness and simplicity of Malcolm McCusker. To come even part of the way of achieving his ideal would be a Herculean labour.

It will be apparent from my remarks about these three significant influences that I consider that the worlds occupied by the judiciary, the profession and the academy are interdependent. Today I leave behind my career in practice and in academia. Until recently, these were fields in which I had hoped to contribute for much longer. But although my time as a practitioner and as an academic was relatively fleeting, there are others whose mastery of all three fields demonstrates the common enterprise involved. Well-known examples in the United Kingdom are Sir Robert Megarry and the late Lord Rodger. And in Australia Justice Heydon is the exemplar.

The last six and a half years which I spent in England combining academic work with practise were for me a fairytale, albeit one without the mosaic of blue skies or sun. But the enterprise was one fairytale, not two. There were debates (and there always were debates) over lunch every day in the Inner Temple, always with the middle row for 1 Essex Court. And there was the passionate disagreement (and there always was disagreement) amongst those leading BCL seminars with me in Oxford in restitution

or commercial remedies. As both academic and practitioner this basic quest was a common quest for legal wisdom within which what Professor John Baker has described as the law's informal second body. Best of all, the journey was one of exceptional collegiality. We all sought the same goal and we were all delighted to be in it together.

I am truly honoured that two of my colleagues, Professor Timothy Endicott, the Dean of the University of Oxford, and Mr Simon Colton from 1 Essex Court have travelled nearly 10,000 miles to be here; in Simon's case quite literally just for this day. I will miss Simon's encyclopaedic understanding of legal practice and procedure but I will not miss being hit by the rubber ball that he used to throw at the wall as we discussed cases in his office. Apparently it was always an accident.

I will always be grateful for the collegiality and the passionate spirit of my colleagues at the first university and the third (the Inns of Court). Although much will change as I move to my new life in the law and to new challenges, I hope that much will also remain the same. I look forward to being part of the mutual engagement between the judiciary, the profession and the academy and I eagerly anticipate the company of my new colleagues to the collegiality of the Court and to sharing my part in this new role which I am now privileged to play in the single enterprise of law.

Most fundamentally I am so delighted to return to Australia and to the fourth and most significant influence on my life; my family. I am honoured by their presence today in the jury box and the front row of the court. I am also honoured that my sister Lara flew from Hong Kong with her husband and children to be present with me at the more formal ceremony on Friday night. I am only sorry that my grandfather and grandmother, Howard and Eve, who were such a large part of my early life are not here today but in the jury box or waiting closely outside are my son Jonah Howard and my niece Eva who share their names.

It is my family who have shaped my life in every sense. We are a spirited family but we have been close and I have always be surrounded by great generosity and compassion from my grandparents, my parents, my uncles and my sisters. My mother bore the lion's share of my upbringing and, as my kindergarten teachers may attest, the metaphor of a lion's task is probably fairly apt to describe that role.

She was also an exceptional teacher and I grew up aware that one of the most powerful ways to touch the lives of others is through teaching. Although my mother would never admit it, I suspect her pride today is mingled with a little sadness that I have given up a career as an academic. But I will never cease to be both a teacher and a student of the law. Justice Frankfurter tells the story that after he left 25 years as a teacher of law to become a Judge, he attended a Harvard reunion. One of the speakers at the reunion remarked, "What a pity that Frankfurter is no longer a teacher". Before he could respond, one of his colleagues remarked, "Oh, he is still a teacher, only his class is much smaller than it used to be and far less responsive".

Lastly, but never, ever least, is my wife Sarah and my children Tatiana and Jonah. At my farewell reception in London, Lord Grabiner speculated that the offer to me of a position on the Supreme Court was actually a cunning move engineered by the University of Western Australia in order to entice Sarah there to become a professor. Sarah has been my confidante and the backbone of my life for every single day since the first day we met, almost exactly a decade ago, when Justice Nye Perram deliberately contrived our first date. This new life is particularly a new journey for Sarah and for Tatiana and Jonah. But if our first week back in Australia is any model, we will all relish this adventure for the next 33 years and beyond. Thank you.

MARTIN CJ: Thank you, Justice Edelman. Before the Court rises, I would like to also acknowledge the presence here this morning of the Shadow Attorney-General John Quigley MLA and Mrs Quigley. I apologise for my earlier omission but unfortunately my brief was deficient in that regard. The Court will now adjourn.

AT 10.18 AM THE MATTER WAS ADJOURNED ACCORDINGLY