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THE SUPREME COURT OF

WESTERN AUSTRALIA

FAREWELL TO THE HONOURABLE JUSTICE HEENAN

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 23 JUNE 2015, AT 4.33 PM

MARTIN CJ: The Court sits this afternoon to mark the retirement of The Honourable Justice Eric Heenan from the Court following more than 13 years of service as a member of the Court. I'm very pleased to welcome members of his Honour's family to this afternoon's sitting, including his Honour's wife Elizabeth, their children Eric and Jessica, Ms Helen McNally, and other members of his Honour's family and invited guests.

I would also like to welcome The Honourable Justices Tony Siopis, John Gilmour, Michael Barker, and James Edelman, of the Federal Court of Australia, The Honourable Justice Stephen Thackray, Chief Judge of the Family Court of Western Australia, his Honour Judge Kevin Sleight, Chief Judge of the District Court of Western Australia, President Denis Reynolds of the Children's Court of Western Australia, his Honour Chief Magistrate Steven Heath, Ms Cheryl Gwilliam, Director General of the Department of the Attorney General, and many other distinguished guests too numerous to name, including many past members of this Court.

I would also like to particularly welcome those who address the Court this afternoon, being Mr Paul Evans representing the Attorney General of Western Australia, Mr Matthew Keogh, President of the Law Society of Western Australia, and Mr Peter Quinlan SC, President of the WA Bar Association.

Like Dylan Thomas, Justice Heenan does not go gently into that good night of retirement. Tomorrow he attains the age of 70 years and is therefore required to retire from office in accordance with section 3 of the Judges' Retirement Act 1937. A lot has changed in the 78 years since that legislation was enacted, including changes in life expectancy. According to tables published by the Australian Bureau of Statistics, a male born in Western Australia between 1881 and 1890, and who might therefore have been of an age to be a judge of the Court in 1937, had a life expectancy of 46 years.

Although it must be accepted that this average life expectancy may well have been influenced by the First World War, those born between 1901 and 1910 in Western Australia, and who were in the main unlikely to have been affected by World War I, only had a life expectancy five years longer at 51 years. By contrast, a male born in Western Australia in 1971, who might now be a judge of the Court, has a life expectancy of 68 years or 22 years greater than a person

likely to have been a judge in 1937 when the retirement age was set.

It seems to me that it might be time for Parliament to reconsider the age at which judges are required to retire in light of these significant demographic changes. Justice Heenan provides a prime example of a judge who could continue to provide years of valuable service to the State and people of Western Australia if not forced to retire by reason of attaining an arbitrary age, but I digress.

Eric Michael Heenan took office as a judge of this Court on 4 April 2002, and was welcomed to the Court at a ceremonial sitting held the following day. Those who addressed the Court on that occasion referred to his Honour's legal lineage, including the fact that his Honour's mother and father were both distinguished and eminent members of the legal profession, as is his Honour's wife. It seems now safe to declare this lineage to be a legal dynasty, given that his Honour's son, Dr Eric Michael Heenan III has foregone the romance, glamour and celebrity of high energy particle physics and now practises at the Bar.

Much was said of your Honour's distinguished legal career at the time of your appointment to this Court, including in particular your Honour's many years of service on the Medical Board of Western Australia. I had the opportunity to experience your Honour's detailed knowledge of the field of medicine on a number of occasions upon which we were engaged on the opposite side of cases, in which it was alleged that there had been a departure from an appropriate standard of care on the part of a medical practitioner.

Our communications with respect to those cases were conducted in terms which contemporary politicians would describe as robust, characterised by a full and frank exchange of views. A similar characterisation could be applied to our communications with respect to the affairs of the Bar Association, during times at which we each held various offices within that organisation, and more recently could also be applied to our regular communications with respect to the activities of the Court. I can say without equivocation that there has never been a time during our lengthy professional relationship when I've ever had cause to speculate about your Honour's position on any issue.

The clarity with which your Honour has been in the habit of expressing your views has been matched by eloquence and dignity in equal measure. I will remember an

occasion upon which Justices Ipp and Seaman explained to a gathering of the legal profession in this courtroom that the large backlog of civil cases awaiting trial necessitated desperate measures in the form of a blitz, in which there was a risk that parties may be called to trial without adequate notice or the representation of their choice. With great dignity and apparent respect, your Honour politely inquired of their Honours how they were able to reconcile those measures with their oaths of judicial office.

I've had the pleasure of responding to questions expressed in similarly direct terms during my term in office, but happily posed in private rather than in public. But I am very pleased to record that the frankness with which we've each expressed our different views from time to time has never detracted from our friendship, which has been cemented on many occasions with a modest libation following a hard day at the coalface.

During more than 13 years of service as a member of the Court your Honour has made an outstanding contribution to the work of the Court. Prior to your appointment you were one of the few senior counsel who could be fairly described as a general practitioner, in the sense that you were experienced and adept in a wide variety of jurisdictions, including complex commercial cases, personal injury claims, criminal cases, and professional regulation. Your Honour has made good use of that diversity of experience and expertise as a member of this Court, and has presided over a number of the most significant cases before the Court in each of the areas of jurisdiction I've just mentioned.

I would, however, particularly mention the important role which your Honour has performed as chair of the Court's Probate Committee and as general overseer of that important area of the Court's jurisdiction. The Court deals with a little under 7000 non-contentious probate applications each year. That number has grown steadily over recent years as a consequence of demographic change, including the ageing of our population. Each and every one of that large number of applications is important to the families involved. In some cases prompt access to assets within the deceased estate is necessary, perhaps to preserve those assets or to provide the necessities of life.

Although we've not always been able to process non-contentious applications as quickly as we would like, your Honour has overseen a number of projects for administrative

and procedural change which have ensured the most efficient use of the resources which we have been able to deploy in this area. Your Honour has also dealt with a number of contentious cases in this jurisdiction, and your reasons for decision have provided significant guidance to practitioners in this area in respect of both substantive legal principles and procedure. The registrars of the Court have specifically asked me to express their appreciation for the very considerable guidance which your decisions in the probate area have provided to them in the discharge of their important responsibilities in this area of the Court's jurisdiction.

Your Honour leaves very large shoes to fill, and not just because your Honour has rather large feet. Your contribution to the professional and collegiate life of the Court will be sorely missed. On a more positive note, however, your Honour's retirement is likely to lead to a significant boost to the economy in those parts of France in which you are already a well-known visitor. It only remains for me to express on behalf of all the members of the Court our gratitude for your Honour's outstanding contribution to the work and the life of the Court, and our best wishes for a long and enjoyable retirement. Mr Evans.

EVANS, MR: May it please the Court. It is my privilege to appear on behalf of the Government of the State to farewell your Honour, Justice Heenan, from the Bench of this Court. May I firstly convey the apologies of the Attorney General, The Honourable Michael Mischin MLC, for his inability to personally attend the sitting of the Court. May I convey the gratitude of the Attorney for your Honour's service as a judge over the last 13 years.

Your Honour's departure from the court marks the end of one chapter in a legal story that now spans three generations. It's a legal story of great eminence in which your Honour has written exemplary chapters of service over the last 13 years, and before that in the preceding years at the Bar.

The Chief Justice has noted that your Honour was born in Kalgoorlie. The family into which your Honour was born was already making a mark in the law. Your father the then Eric Senior had been elected Labor MLC for the North-East Province in 1936. At that time it was still possible for a politician to maintain a career outside Parliament, and the Heenan practice in Kalgoorlie was successful and important to his community.

Your mother Joan had studied arts at the university, and after graduation and working as a primary teacher had decided teaching was not for her. She enrolled to study law at the University of Western Australia and upon graduation found articles with O'Dea and O'Dea at a time when it was not then easy for a woman to find articles, in particular, during the Depression. That firm worked for, amongst others, prominent goldfields identity Claude de Bernales. He was something of a rogue, but a faint shadow of some of the characters with whom your Honour was to later deal.

Your parents were partners in both politics and law, with your mother assisting in both electoral campaigns and in Court, and in other legal work in the office. When war was declared, many men from the goldfields enlisted and she remained the only permanent lawyer in Kalgoorlie, where you were born in 1945 at the end of that tumultuous period. Five years later the family moved to Perth and your mother purchased premises in 70 St Georges Terrace, setting up E.M. Heenan and Co, also acting as town agent of the Kalgoorlie firm now Heenan, Hartrey & Co. Your father continued to travel and work in Parliament, and in his Kalgoorlie electorate and legal practice, for more than 20 years until he left politics in 1968 but continued to practise law.

In the meantime, you were educated at Sacred Heart College and Christian Brothers in Highgate, and then Aquinas College, before graduating with honours from the University of Western Australia Law School in 1966. Like your cousin, later Justice Des Heenan, you were articled with your parents' firm, joining that firm as your cousin left and being admitted in 1969. Like him, you also became a partner of the firm, and following what seems to become a family tradition, left the amalgam in 1983 to practise solely as a barrister as the family practice merged with Northmore Hale Davey and Lake. Your mother Joan remained to practice law there until her retirement in 1991.

Along the way you met and wed the formidably bright Elizabeth who had studied economics before turning to the law. She was also to be articled at the family firm to your mother Joan. But she was to remain with the firm following the merger, becoming a partner in Northmore Hale, and later Minter Ellison when that firm joined the long list of those foregoing their names and connections to distinguished members of this Court in favour of a national name.

You were appointed Queen's Counsel in December 1985, and in the succeeding 17 years your Honour enjoyed a diverse career of distinction, in particular, from my association with you in the high profile, often frenetic, litigation that related to the corporate activities of Western Australia's prominent and in some cases notorious characters of the late 1980s and their companies. They would make de Bernales and his activities pale by comparison.

Some of those activities had legal consequence of great complexity and duration. Some are not yet resolved. It was in such a matter that I first recall meeting you and briefing your Honour, in that case, on the late Robert Holmes a Court whose Bell Group was then the subject of a siege by Ron Brierley. It ultimately fell to Bond Corporation in one part of a series of transactions, the aftermath of which was to consume a considerable part of your Honour's time over a number of years, and ultimately the lives of many lawyers in this State.

You were to lead for the national regulator in a number of matters. But in particular, you were to act for the State in a series of cases instructed by the then Crown Solicitor's office in recording or resolving the issues of that period. Most notably you led for the State in the hearings of the Royal Commission into Commercial Activities of Government and Other Matters, in *Bond Corporation Holdings v West Australian Government*, *Western Australia v Southern Equities*, and in the High Court in the seminal case of *Wardley Australia v The State of Western Australia*.

Despite this unremitting workload, he found time to sit as a Commissioner of this Court in 1990 and 1994, and to (indistinct) thrash Mr (indistinct) and myself in our next takeover-related encounter in *Brown v Panga*. Others will speak as to your contribution more generally to the profession, and his Honour the Chief Justice has already noted your contribution to the Medical Board and the Advisory Committee to the Minister for Health. You have also been involved in the community with the Art Gallery of Western Australia Board where you were Vice Chairman. You were Deputy Chairman of the Aquinas College Board and a past Chair of the Ethics Committee of Notre Dame University.

Perhaps your last long case before your appointment was *Mount Lawley v The Western Australian Planning Commission* where your Honour represented the interests of Mr Martin Copley, a client who as it happened I had referred to your instructors in that case, and with whose

charitable works your Honour was to retain an association until his recent and untimely death.

The chapter of your Honour's career in which you were one of the leading advocates of the State came to a close in April 2002 with your Honour's appointment. A year after your appointment the Court marked the centenary of the opening of this building. Your wife Elizabeth was to represent the amalgam in her then capacity as President of the Law Society. The Chief Justice also noted your valuable contribution to the Probate and Succession Committee and its practise in this Court, an area of law in which your wife Elizabeth is also a distinguished practitioner.

To maintain the theme, your son Eric, now Eric Junior, was articled to the State Solicitor and followed the family footsteps to the Bar not long ago. The story continues.

This is the close of a chapter in a story of many chapters. In recent times, many members of the Court have retired in the broader sense of the term only to have another chapter commence. The pages of the next chapter will undoubtedly involve travel, and an indulgence in French culture is undoubted. As to the rest, that awaits authorship. It leaves me only to again convey the thanks of the Attorney General on your service and best wishes for the future. May it please the Court.

MARTIN CJ: Thank you, Mr Evans. Mr Keogh.

KEOGH, MR: May it please the Court. Today I have the pleasure and honour of conveying the gratitude of the Law Society of Western Australia and the legal profession of Western Australia to his Honour, Justice Heenan, for his great service as a member of this honourable Court. Born in Kalgoorlie, subsequently moving to Perth, your Honour was not only dux of Aquinas College but also awarded a general exhibition and special exhibition in physics, an early demonstration of your Honour's interest in sciences which stayed with you throughout your legal career and appears to have been passed on to your children as well.

Your Honour's legal career has been long and distinguished, commencing with E.M. Heenan and Co, and I'm pleased to say that your Honour joined the Law Society upon your admission to practise. You went on to become a partner of that firm and quickly developed a very diverse practice in a way that is not common today. Your Honour also quickly took to cases that led to the High Court,

including your first, *Cox v Tomat*, appearing and obtaining success as counsel in the High Court at the age of only 26.

This was not the only such occasion, and at the age of 30 your Honour again found success in the High Court with *Robinson v The Western Australian Museum*, the Gilt Dragon case. But I understand that my learned friend Mr Quinlan will say more about that shortly. Another of your Honour's High Court cases of note was that of *Bond v The Queen*. This was a landmark case regarding the power of the Commonwealth Director of Public Prosecutions to prosecute corporations offences.

While a case of great legal interest, it also provides a great example of the difficulties such cases can present counsel when they are arriving in the High Court. And the Court provided absolutely no latitude to your Honour on that occasion, not even allowing your Honour to even complete giving his appearance before enquiring as to which right of the Crown to which you were appearing on that occasion.

Both in the amalgam and at the Bar since 1983, your Honour has had a diverse practice which was reflected in the cases I've already mentioned, but also in two further cases. The first concerned an intestacy from 1940 which demonstrated your Honour's leadership in the West Australian profession, this case affording you an opportunity no longer available to those of us remaining of appearing in the Privy Council. The second being one of the most important cases your Honour appeared in at first instance, an Inheritance Act matter, *Vigolo v Bostin*. This matter ultimately went all the way to the High Court as well, though after your elevation to this honourable Court in 2002.

These proceedings are one of the most well-cited authorities in that area. Indeed, as mentioned by the Chief Justice, your Honour has been most interested in the area of wills and estates, chairing the Court's Probate Committee. Drawing upon your great experience in the area when in practise, which I understand was an interest developed early in your practising career by your mother from her time practising in that area as well.

Your Honour also had a large medical negligence practice, an area of practice and interest that you have continued to maintain ever since. Your Honour was of course appointed Queen's Counsel in 1985 and was one of the counsel appearing at the WA Royal Commission, and was involved in the negotiations on behalf of the State

Government Insurance Commission regarding the Bell Group shares.

Your Honour also advised Aboriginal Deaths in Custody Royal Commissioner Wyvill QC in the challenge to the validity of that Royal Commission. Your Honour has given great service to the legal profession of Western Australia through long-running service to and involvement in the Law Society's education committee and its programs, including at recent law summer schools, and we look forward to you continuing that contribution in retirement.

Your Honour has served on a number of other Society committees, assisted in the development of the Society's LawCare initiative, were a member of the Legal Practice Board's precursor, the Barrister's Board from 1985 to 2002, and of course served as President of the WA Bar Association, and critically curated the art collection of Francis Burt Chambers. Your Honour was also known during your time at the Bar, and no doubt in the amalgam, as being someone whose door was always open to senior and junior members of the profession.

As has already been mentioned, your Honour has also provided great assistance to the wider West Australian community through varied contributions in medicine, art, ethics and education. Your Honour was also an early adopter of technology, being the first member of the Bar to embrace email and appearing as counsel in some of the earliest electronic trials and appeals.

Your Honour has also been known for your consistent appreciation of extremely safe Swedish motor vehicle engineering, a passion which I share, and that seems to have been adopted widely by your family. Your Honour is also a creature of habit, dining almost exclusively for lunch unfailingly at David Jones each day, though I do note that I did observe you eating elsewhere only yesterday, which is maybe a sign of changes to come.

Your Honour's appointment to this Court was very warmly welcomed, inspiring the attendance of Sir Francis Burt, Sir Ronald Wilson, John Toohey, a number of former judges of this Court, and many members and heads of other jurisdictions, amongst others. The same gratitude for your service can be seen in today's attendance in the Court.

As was remarked when your Honour was appointed to this Court, your career and life have demonstrated that you possess all the personal qualities that are required of a judge: integrity, good character and reputation;

fairness, independence, and impartiality; maturity and sound temperament; social awareness, courtesy, and humanity. Your Honour's time on this Court since has certainly borne this out.

Your Honour has also been very loyal and attracted loyalty in return, with your secretary at the Bar of 17 years, Ms Michelle Davies, also then taking on the role as your first associate for some years, and I note that a number of your Honour's former associates are here today as well.

Your Honour, you retire from this honourable Court today having made a large and lasting contribution to the legal profession, this Court, and the jurisprudence of this State, and Australia. Your Honour will be missed from this Court, and the Society and the profession look forward to the hopeful imminent filling of the vacancy left by your Honour's departure and the recent departure of former Justice McKechnie. The legal profession thanks you for your long service to the profession and the State, and wishes you and your family very well in your retirement. May it please the Court.

MARTIN CJ: Thank you, Mr Keogh. Mr Quinlan.

QUINLAN, MR: May it please the Court. It is with great pleasure that I appear on behalf of the Western Australian Bar Association on this occasion of your Honour's retirement to acknowledge your Honour's significant contribution to this Court and the community of Western Australia as a judge of the Court for over 13 years. We also acknowledge and thank your Honour, too, for the enormous contribution your Honour made to the legal profession of this State in over 30 years of legal practice, most of which were as a member of the Bar Association.

We acknowledge and congratulate, too, your Honour's family, your wife Elizabeth and Doctors Eric and Jessica, who I am sure join in the celebration of your Honour's career and look forward to your Honour's retirement. Your Honour's grandchildren, Alice and Ivy, who are strategically absent from the courtroom, no doubt are particularly looking forward to spending more time with you.

As has already been mentioned, your Honour's contribution to the law and the legal profession forms part of what may be best described as an extended family business. Your Honour's father, Eric Michael Heenan

Senior, admitted as a practitioner of this Court almost exactly 40 years before your Honour, and was both your Honour's principal and partner. And of course, as has been said, your mother Joan Mary Heenan is widely acknowledged as one of the pioneers for women in the legal profession in this State.

The citation for the Heenan-Payne Prize, which is annually awarded by the Women Lawyers of Western Australia, rightly describes Joan Heenan as "trailblazing". That trailblazing baton was of course passed on to your wife Elizabeth, who in 2012 was the inaugural recipient of the National Australian Women Lawyers Award for her role as a model and mentor for a generation of Australian women lawyers.

It comes as no surprise, then, that your Honour has also been a great supporter of the advancement and opportunity for women in the legal profession. In that regard, knowing that I was speaking today, of the members of the Bar that approached me with stories of assistance and guidance your Honour gave to their careers, the majority were women. To refer to only a couple of those contributions, your Honour is one of the few leaders of the Bar who regularly employed new graduates to provide them with the opportunity to commence their articulated clerkships at the Bar, and so be exposed to work as an advocate at the earliest stages of their career.

Two of those students, Belinda Lonsdale and Rebecca Lee, have gone on to successful and distinguished careers at the Bar where they continue that tradition of mentoring and support for younger practitioners. Ms Lee remarked that your Honour was a fine example of the adage, "Lift while you climb". Ms Lonsdale also recounts with great admiration an occasion where, to encourage her interest in practice at the Bar, your Honour arranged and paid for a long lunch at the famous Coco's Restaurant to introduce her to the leading women of both Bench and Bar.

It was a large gathering - you were the only man in attendance - which included their Honours Judges Kennedy and French, and visiting from England, Patricia Scotland QC, in 1991 the first black woman to be appointed Queen's Counsel and now Baroness Scotland of Asthal. Such practical assistance to the careers of others was always a characteristic of your Honour's career.

And of course, as has been said, the legal dynasty now moves into its third generation, with Dr Eric Heenan's election to the Bar Association in 2012. The admission of

'Young Eric', as he is affectionately known, now means that there has been an Eric Michael Heenan continuously on the role of legal practitioners of this Court since 1929. Dr Heenan's success at the Bar bodes well for the centenary of that position in 14 years time.

Characteristically, in your Honour's case, however, the arc of your Honour's legal career goes back much further than 1929. The year 1656, to be precise. That was of course the year in which the Dutch vessel the Gilt Dragon became wrecked off the coast of Western Australia where it lay until discovered by Ellis Alfred Robinson in 1963.

In 1964 the Parliament of Western Australia enacted legislation seeking to acquire property rights in wrecks to the Gilt Dragon and others, and to defeat Mr Robinson's salvage rights. As my learned friend Mr Keogh has said, it was of course to your Honour that Mr Robinson turned for legal assistance in his battle against the State.

Your Honour has been figuratively and literally such a towering figure in the WA legal profession for so long, that it is easy to forget that you could once have been described as precocious. But precocious is the only way to describe what appears in volume 138 of the Commonwealth Law Reports. Your Honour appeared in *Robinson v Western Australia*, as Rumpole would say, "alone and without a leader".

The other parties were represented by Maurice Byers QC juniorred by Murray Tobias, Ronald Wilson QC juniorred by Kevin Parker, and William Deane QC juniorred by David Hodgson. Of that company, three became knights, two became High Court judges, and the balance judges of various Supreme Courts. It was, as they say, no easy crowd. Notwithstanding this illustrious company, not only did your Honour go on to win the case but did so at only 30 years of age. That kind of precociousness simply isn't around any more.

It may be observed that those who profess to practise in constitutional law belong to a notoriously closed shop, consisting largely of Solicitors-General, usually a couple of Sydney silks, and a small clique of Oxford graduates. In 1993 and 1994, when I stumbled into and out of that group for a short time, I can attest to the fact that 17 years after *Robinson v Western Australia*, your Honour's advocacy in that case continued to be talked about and held up as an exemplar of great constitutional advocacy.

Your Honour's career of course went from strength to strength, including taking silk in 1985 and serving as President of the Association from 1990 to 1992. As the Chief Justice has noted, in an ever-increasing specialisation in the legal profession, your Honour managed to maintain a practice at the Bar that was wide and diverse, from crime, civil and commercial, administrative and constitutional, and of course, personal injuries.

In the personal injuries field in particular, that most important but often regrettably overlooked area of the law, your Honour was the acknowledged leader of the Bar, particularly on the plaintiff's side of the bar table. One of my leaders, who will remain nameless to preserve the dignity of the Court, once remarked to me, as a direct result of an experience of appearing against your Honour in the Full Court, "I don't do quantum".

Your Honour's experience over such a wide range of practice areas has, as the Chief Justice has also remarked, served the Court and the people of Western Australia well over the last 13 years as a judge of this Court. The coherence of the law as a whole is greatly assisted by the cross-pollination of seemingly disparate fields of practice and modes of thought. Your Honour's lengthy and practical experience in so many of the court's jurisdictions has therefore been greatly valued and will be greatly missed.

Of course, it is not only the legal profession that has been able to recognise your Honour's particular talents and qualities. As has been mentioned, your Honour has been held in the highest of esteem by the medical profession. Indeed, following your appointment to this court, you were the subject of special honour by the Australian Medical Association who awarded your Honour the 2002 President's Medal in recognition of your Honour's significant contribution to the medical profession. That is no small feat for a legal practitioner. For a "plaintiff's counsel" it is practically unheard of. Of course, your Honour's contribution to the medical profession too is intergenerational, your daughter Jessica now being both a Fellow of the Royal College of Physicians and the Royal College of Pathologists.

To illustrate the regard in which your Honour is held in both the legal and medical professions, may I remind the court of one incident that occurred in one of those many cases referred to by the Chief Justice in which you both appeared concerning an alleged breach of duty of care by a medical practitioner. It was a case in which I was

fortunate to appear as junior counsel for the first defendant. The other defendant was represent by Ross Gillies QC from the Melbourne Bar leading a slightly younger and slightly lighter Theo Lampropoulos. In the course of the defendant's case, your Honour was cross-examining one of our expert witnesses, a world-renowned professor of obstetrics from King Edward Memorial Hospital.

The trial was being conducted in what was then the May Holman Centre, where the back of the court was entirely made up of windows through which, at various times of the day, the sun would beat down mercilessly. Your Honour's cross-examination had been going for some time when the witness, who was facing both your Honour and the windows at the back of the court, asked the judge through squinted eyes, "Your Honour, could I ask that someone please close the curtains at the back of the court. Mr Heenan's head is shrouded in bright light". Gillies QC immediately rose to his feet and remarked, "Closing the curtains is not going to solve that". It may be apocryphal but Lampropoulos swears to this day it was the only time that he observed your Honour to blush.

Given your Honour's love of Latin, may I close with a quote borrowed from paragraph 9762 of Owen Js judgment in the Bell Group proceedings and say that we trust that your Honour is able now to say in the words of Ovid, with an embellishment from the old Latin Mass: Iamque opus exegi, Deo gratias - and now I have finished the work, thanks be to God. On behalf of the Bar Association can I extend our gratitude to your Honour for your contribution to the Bar, this court and the community of Western Australia. We trust that your Honour now looks forward to an enjoyable retirement with family and friends and we wish you all the best in your future endeavours. May it please the court.

MARTIN CJ: Thank you, Mr Quinlan, for your remarks and for sparing my dignity. Heenan J.

HEENAN J: Chief Justice, your Honours, Mr Evans, State Solicitor, Mr Keogh, president of the Law Society, Mr Quinlan, president of the Bar Association, may I say how deeply I appreciate the extravagant compliments that you have paid to me today. I am vain enough to be flattered by your remarks but I hope not vain enough to realise that this is an occasion for compliments rather than sober evaluation. For me, this is just as well.

I am also greatly honoured by the presence of so many judges from this and other courts, and retired judges, many of whom are close colleagues, and magistrates, senior law

officers of the State and Commonwealth, members of the legal profession, family and friends, especially please Professor Con Michael and Professor Bryant Stokes, senior members of the medical profession with whom I shared many years of office while on the state Medical Board from 1998 to 2002 are present, as they were at my welcome as a judge in April 2002. I greatly value my association with that other noble profession and I have learned much about service to humanity and eternal human values from that connection.

Mr Evans, I am grateful for the kind observations you have made on behalf of the Government and the State. Please convey to the Attorney General my thanks for them and for the trust reposed in me when I was appointed to this office. At the bar I had many large cases acting for the State of Western Australia or the Commonwealth, their various instrumentalities and ministers. These afforded me considerable insight into the roles of the law officers of the State and of the Commonwealth crown and of their vital role in government. May I add that I have always received the greatest of assistance from counsel for the State or the Crown in cases before me, whether in the civil or in the criminal jurisdictions. This represents a long tradition of excellent service by your officers which deserves to be more widely recognised.

Mr Keogh, I greatly appreciate the remarks you have made on behalf of the Law Society, which, of course, represents the majority of lawyers practising in this state. I have always valued my membership of your society and relished the times when I served on its council and committees. Your society does great service to the community in its many activities, including legal education, law reform and professional development. More appreciation of its great work is needed.

Mr Quinlan, I deeply appreciate the observations you have made on behalf of the Bar Association, that collection of independent individuals who specialise in advocacy and forensic advice. The New South Wales Bar Association has as its motto: servants of all but of none - and this is an apt epitome of all bars, including your own. I feel that I never have enjoyed greater privilege or trust than when I too was president of the WA Bar Association in 1990 to 1992. It is a role whose memory I have always treasured. Your members continue to deliver great service to the public for many clients often during their darkest hours.

It is now a long time since I began my journey in the law. Enrolment in 1963 at the University of Western

Australia at a time when I was torn by the temptations of a rival career in science, an interest I have never really abandoned. Membership of the last cohort of law students to be lectured by the late Professor Beasley and the last year to have been entirely taught at the old law school buildings, the weatherboard structure in Irwin Street on the west side of the Crawley campus, watched by batteries of scornful first year medical students doing laboratory classes in the Department of Botany overlooking our courtyard.

The figures tell much of the subsequent changes in the legal profession. When I was admitted in 1969 my role number was 901. My father was admitted in 1929. His number was 397. Now, at latest count, there have been 12,223 practitioners or lawyers admitted in this state. My career has fortunately fallen into three main parts, the first 16 years in general practice at E.M.Heenan and Co, founded by my late father to whom I was articled, as mentioned. I am delighted to see several former members of that firm here today, including Barker J and John Gilmour J, who were members of the firm while I was there. It is a matter of no small pride that from that small firm and from the lawyers with whom I then practised, there have to date emerged eight judges, four of this court, two of the Federal Court and three of the District Court. Barker J accounts for the odd arithmetic, as he has been a member of both this court and the Federal Court.

Then I had over 18 years of the Bar from 1983 to 2002 of which I was a Queens Counsel for some 17 years, a role of immense satisfaction and interest and one very hard to relinquish. Now I have been a judge of this court for over 13 and have enjoyed sitting in all of its civil, criminal and appellate jurisdictions. To recount these experiences is to reveal how fortunate I have been.

I can look back at the great benefit I have derived from seeing great judges discharge their functions with grace and a keen eye for the justice of the individual case. Two past Chief Justices come immediately to mind, and I will mention only them because of the effects their example had on me as a young lawyer. First is Sir Lawrence Jackson, Chief Justice from 1969 to 1977. He was an urbane and charming man whose gentle tact did nothing to diminish his role as a fine lawyer and efficient judge. It was he who quickly banished the culture of aggressive rudeness by some judges which had prevailed during earlier years and which caused great harm to the profession and cast a shadow over the dignity of the court.

Jackson CJ showed how effective was his method of patient courtesy and how much this contributed to the dissection of the problems in a case and in identifying the solution. Ever gracious, he was adapt at the soft answer which turns away wrath. His was an immense influence and it would be very retrograde if these former corrosive habits ever again took hold. As President John Kennedy said in his first inaugural address in 1961 civility is not a sign of weakness.

The second figure is Sir Francis Burt, Chief Justice from 1977 to 1988 and one of the greatest judges of our times. His knowledge, penetrating insight and honed intelligence were formidable and he had a detached wisdom which never overlooked the human elements or the crucial interests of the parties before him. I must confess that in my time on this court when sometimes confronted with an unusually difficult or wrenching decision, I would often ask myself the question what would "Red" Burt have done here? So great is his legacy and so lasting his ethos that the answer was never long in coming and would usually lead to a solution.

One of the pleasures of attaining some seniority in this court has been that over past years I have occasionally presided over admission ceremonies. This is a very revitalising experience between one sees the conspicuous abilities and idealism of fresh, young lawyers devoted to years of future public service and ambitious for the higher gifts. This gives one confidence and reassurance that the future of the law will be in good and competent hands and that even greater improvement in the principles of the law and its role are their goals. I usually tell these new admittees what great store a society rightly places on its laws and traditions and how long it is that this respect has lasted. As long ago as the sixth century AD the Emperor of Rome in the East, Justinian, when commissioning the institutes which ever afterwards were to bear his name wrote:

What medicine is to disease, so laws are to public affairs.

This therapeutic function for the public welfare is part of the role of all lawyers and judges and requires constant vigilance, constructive criticism and the spirit of reform to discharge. This brings me to acknowledge some of the deep satisfactions of being a judge of this court. All of us naturally long for a system of impartial justice delivered according to democratic laws in public, subject to appellate review and open discussion. This is one of

the greatest virtues for any society. From the courts of ancient Athens to those of imperial Rome, then in the royal courts at Westminster Hall in London, and now in all the capitals of our nation, courts continue daily and pragmatically to perform this task. To be trusted to share in the performance of this function and to do so for as long as I have done is a reward in itself, and one for which no thanks are really due. I have many more to thank for my time on the court and the assistance which I have received. I thank all of the ten associates who have worked so closely with me in the work of the court and whose vital roles have ensured the smooth running of cases and the seemingly endless task of delivering judgments.

Recently we had our annual lunch together and I was impressed at the progress all had made. All 10 are now admitted lawyers and are working all over the world, in Perth, in country areas of this State, in Sydney, Canberra, Melbourne, London and Chicago. I mention two for special acclaim. Ms Michelle Davies, who, as already mentioned, was my resourceful secretary at the bar for 17 years, and then my first associate for two years. I am delighted that after all that she enrolled in law as a mature student, graduated, was admitted and is now in practice.

Mrs Maria Farah, my present associate over the last 18 months, has, like the others, been of unfailing support and assistance, and has coped with the relentless pressures of busy chambers. To her and to all my former associates I am much indebted and very grateful. Some have travelled from interstate to be here today. I wish them all every success in their careers. To my personal staff, my orderlies, Lawrence Charleson, and earlier Richard Weston, I am especially grateful for loyal, thoughtful, efficient service.

From my secretaries present and past, Ms Robyn Berman, Mrs Kerry Cross, and Ms Christina Curtis, I have received unstinting help often under tight pressure, but always efficiently and cheerfully, and this is much appreciated. To the staff of the court, especially the Registrars, the Executive Manager, Mr Rob Christie, and all the registry staff I extend thanks for friendship, efficiency and guidance. Especially, I thank Mr Trevor Almisher and his staff in the Probate Registry for their important work and efficiency which renders this court's probate jurisdiction one of the best performing offices in the country.

I wish also to thank my judicial colleagues both past and present for their good natured tolerance, occasional

tactful advice and support. I must say that there are moments when one wonders whether the burdens are endurable and whether one should persist, but for me the example and encouragement of close colleagues has been a boon. Above all, I thank the members of my family for unremitting love and support over so many years when their husband and father was missing from home or family activities, late on special occasions, and often pre-occupied with his own concerns.

My wife, Elizabeth, has accomplished her own very successful career in the law and has always tolerated and encouraged me in my professional role. Words cannot express my appreciation for this. Our children, Eric and Jessica, have flourished in spite of their father's pre-occupations, and have mapped out impressive careers of their own. Elizabeth's love and support has been unfailing often in demanding times. As I said in my welcome in 2002 this is despite the fact that since we met at university in 1963 she has always been the more brilliant scholar.

So the time has come to go and I look forward to new and different phases of life. I plan to follow and indulge many interests which have necessarily been deferred or constrained in the past. Might things have been different? Could I have done better? Could some mistakes have been avoided? Possibly, but there is no point now in trying to be wise after the events, life is not a rehearsal. We must all deal with the crises and dilemmas of the moment at the time as best we can, and I feel able to say that this is what I have tried to do. I feel consoled by the words of Robert Browning:

Ah, but a man's reach should exceed his grasp,
or what's a heaven for?

Your remarks Chief Justice, Mr Evans, Mr Keogh, and Mr Quinlan are far more than I deserve, but still very reassuring for me and greatly appreciated. The presence of so many distinguished colleagues and friends is a wonderful compliment and honour. For this, and much more besides, I thank you all.

MARTIN CJ: Thank you, Justice Heenan. As usual you have had the last word. The court will now adjourn.

AT 5.23 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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