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THE SUPREME COURT OF

WESTERN AUSTRALIA

WELCOME TO THE HONOURABLE JUSTICE MARTINO

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON MONDAY, 20 APRIL 2015, AT 9.17 AM

MARTIN CJ: The court sits this morning to welcome his Honour Justice Martino to the bench of this court following his receipt of a commission to serve in that capacity from Her Excellency, the Governor, last week. I'm very pleased to welcome his Honour's wife, Lesley, his parents, Emmanuel and Bruna Martino, his son Tim, daughter Jane and daughter-in-law, Richa Tayal, and other members of his Honour's family who have joined us here today.

I would also like to welcome the Honourable Justices Antony Siopis, Neil McKerracher and Michael Barker 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, 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 current serving members of the District Court and former members of this and other courts.

I would also like to particularly welcome those who will address the court this morning, being Mr George Tannin SC, 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. This is, of course, the second occasion upon which his Honour has been welcomed to a superior court in this State; the first being in November 2000, when his Honour was welcomed to the District Court of Western Australia.

Highlights of his Honour's legal career prior to that appointment were canvassed at that welcome, but as that was almost 15 years ago, I might take this opportunity to refresh our collective memory by mentioning some of the more salient features of that career. After graduating from the University of Western Australia in 1977, his Honour commenced articles with the firm then known as Stone James & Co, before being admitted to practice in February 1978.

His Honour's principal was Mr Peter Foss QC and it was serendipitous that Mr Foss was able to address the ceremonial sitting of the District Court to welcome his Honour in his capacity as Attorney-General at the time of your Honour's appointment to that court and I'm particularly pleased to see that Mr Foss and his wife, Jonica, have also been able to join us today. I'm afraid that I haven't had the time or the inclination to track the

various changes in the name of the firm which was Stone James & Co, but in any event, your Honour became a partner in that firm, whatever its name was, in 1983, becoming administration partner in 1986 and managing partner from 1988 to 1990.

I don't know whether the responsibilities of management played any role in your Honour's decision to leave the relative comfort and security of a national firm and join the WA Bar Association in 1991, just as it would be idle for me to speculate whether the managerial responsibilities associated with your recent role as Chief Judge of the District Court played any part in your decision to move across to this court, but what is clear is that your practice at the bar flourished in a wide variety of litigious fields.

Your Honour was also active in professional affairs, serving a variety of roles with the Law society of Western Australia, including as Vice President of that Society in 1993, on the Education Committee of the Society between 1989 and 1995 and as convenor of that very important committee during 1992, on the Litigation Assistance Fund Advisory Board between 1991 and 1994 and on the Young Lawyers Advocacy Committee from 1995 until joining the bench in 2000. And the Advocacy Skills Training Program delivered to young lawyers was a particular interest of your Honour's and you played a very prominent role in its formation and development.

The regard with which your Honour was held in the legal profession was recognised by your Honour's appointment to the District Court at the relatively young age of 46. Upon your appointment to that court, you had to expand your already diverse range of professional interest and expertise in order to embrace criminal law. Despite a relative lack of expertise in that field, your Honour took to it, if I might say, like a duck to water and a natural propensity for work in that jurisdiction was soon revealed, assisted, no doubt, by your Honour's calm and tranquil but firm demeanour.

Not even the most difficult counsel flying in from other jurisdictions were able to get a rise out of your Honour. Your Honour's contribution to the work of the Full Court of this Court, and later the Court of Appeal, over your period of almost 15 years service as a judge, could only be described as negligible, which I will translate for non-lawyers in the gallery as a compliment. Your Honour's judicial acumen was recognised when you were appointed

Chief Judge of the District Court on 1 July 2010, following the retirement of Chief Judge Kennedy.

Since your appointment to that position, I've had the pleasure of working closely with your Honour on various issues of common interests to the courts of the State and we met regularly in the various regular meetings of the heads of state courts, including meetings focused on court administration and meetings focused upon the administration of criminal justice, which are attended by representatives of organisations with a stake in that system. Without exception, I found your approach to be constructive and collaborative and that you've always been guided by the public interest and the proper and efficient administration of justice in this State.

I'm very grateful to you for the outstanding contribution which you made in your capacity as Chief Judge to the achievement of that common objective and to the harmonious working relationship which has been enjoyed between the superior courts of the State. While I will miss that contribution, I have every confidence that Chief Judge Sleight will follow in your footsteps in that regard; my confidence being enhanced by the opportunity we have had to work with Chief Judge Sleight during his lengthy service as a Commissioner of this Court.

We are fortunate, indeed, to have been joined by a judge with such extensive experience in court administration. We will, of course, give you a little while to savour the experience of being spared from the burden of administrative responsibility, but make the most of that time, as you shouldn't be surprised if we ask you to take on some modest administrative responsibilities in the future. As I've mentioned, your Honour joins this court with more than 14 years of judicial experience. Only McKechnie J and Master Sanderson have served for longer than that.

So following the retirement of McKechnie J later this week, you will be both the most recent member of the court, but also the longest serving judge on the court. We are very fortunate, indeed, to have been joined by someone with such extensive judicial experience and which we will certainly be able to put to good use. On behalf of the court, I'm very pleased to welcome your Honour to the court and to welcome your wife, Lesley, into the community of the court. Mr Tannin.

G.T.W. TANNIN SC, MR: May it please the court. It's a pleasure to appear today on behalf of the Attorney-General

for Western Australia, the Honourable Michael Mischin MLC, to welcome Justice Martino as a member of this bench. The attorney extends his apology, cabinet trumps this occasion unfortunately. Justice Peter Dominic Martino was born and raised and educated in Western Australia. I will just (indistinct) some of that history just briefly. After completing articles at Stone James in 1977, his Honour was admitted to practice in 1988.

He became a partner of Stone James in 1983 and he rose to managing partner between 1988 and 1990. In 1991, he joined the independent bar and he practised solely as a barrister mainly in civil litigation, personal injuries, trade practices, professional negligence, corporations and insolvency matters. His Honour's practice as a barrister was very busy and it was industrious, but he nevertheless found the time to contribute to the community of the law and that is through the various capacities that he served in the Law Society.

He also worked as a member of the teaching faculty of the Australian Advocacy Institute and is also a part time member of the Commonwealth Human Rights and Equal Opportunity Commission and acted also as a Commissioner of the District Court. He was appointed, as his Honour the Chief Justice has mentioned, as a judge of the District Court on 10 November 2000. At the welcome speech on 13 November 2000, the then Attorney-General, Mr Peters Foss QC, said of Judge Martino, and I quote:

I do think that one of the essential characteristics of his Honour is that he is a man of humanity. I don't think he is a person who bears ill-will to any person. I think it's a very important judicial characteristic indeed.

May I respectfully say that those words were true then and they've remained true ever since. The practical jurisdiction of the District Court, when your Honour first joined it, and now, required complete emersion in and adjudication upon all of the human complexities, extremes and nuances that the criminal law reveals; the criminal law being a beast that shows the very worst of human kind and, on occasion, shows the very best of them. That jurisdiction was a very long way from the civil jurisdiction that your Honour had trained in and worked in, but you succeeded so well and so consciously and diligently that on 1 July 2010, you were appointed Chief Judge of the District Court.

As head of that jurisdiction, your Honour provided leadership, exemplary leadership, if I may say, during 5 years. Your Honour earned and maintained the trust, firstly, of your judicial colleagues, secondly, of the legal profession, but thirdly, and most importantly, the Western Australian community and the Western Australian community is very privileged to be granted such enduring and exemplary judicial service and can be very pleased that it will continue on this Court.

His Honour Justice Martino's elevation and appointment to the higher jurisdiction of this honourable court is entirely deserved. Without going further, if I might just quote Bob Dylan, and his Honour will ask, "Where's the reference to that?" It's from Love and Theft 2001. May I quote, "The game is the same, it's just upon another level." It's with great pleasure that I also acknowledge the presence of three generations of your Honour's family to witness this momentous day. On behalf of the Attorney-General and the State of Western Australia, I respectfully congratulate your Honour and wish you well. May it please the court.

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

M.J. KEOGH, MR: May it please the court. I have great pleasure in welcoming his Honour Justice Martino to this court on behalf of the Law Society of Western Australia and the West Australian legal profession. It has been mentioned that your Honour undertook articles at Stone James, which I can inform the court is now known, several mergers later, as the international firm of King & Wood Mallesons. By your elevation, your Honour will be joining on the bench a number of your Honour's former partners at that and other predecessor firms.

Your Honour became a partner and later the managing partner of the Perth office of that firm and while a partner, and upon moving to the bar, you were an active contributor to the profession, such as through being a member of the Law Society's education committee, including as a time, its convenor, a member of the Litigation Assistance Fund Advisory Board, a member of the Young Lawyers Advocacy Committee until your Honour's appointment to the bench and a Law Society councillor, then its treasurer and then its vice president.

At the time of your appointment to the District Court bench, it was noted that your Honour would be in good hands, joining a former Law Society president on that bench, Judge Kate O'Brien. I now see that you are indeed

surrounded with your Honour joining his Honour the Chief Justice and their Honours Chaney, Le Miere and Martin JJ, also being former presidents of the Law Society.

Your Honour was also a part-time Commissioner of the Commonwealth Human Rights and Equal Opportunity Commission, a senior member of the Australian Advocacy Institute Faculty and has made a longstanding contribution, and a continued one at that, to the education of young lawyers, in particular their advocacy skills through the Law Society's young lawyers practical advocacy weekends, a contribution that we hope you will be able to continue. I personally had the pleasure of working with your Honour on these weekends and in my past life, I also had the opportunity to appear before your Honour on behalf of the Commonwealth DPP in certain criminal listings.

In my experience, which I understand is reflected in the experience of others, I found your Honour to be considered and fair, but also very clear with parties whose conduct may be impeding the efficient operation of your courts. This has been described by others as your Honour as being known to be a straight shooter who rejects pomposity and can't.

Having reviewed your Honour's previous welcome ceremony transcripts, your Honour has been variously, yet consistently, described as a man with great humanity, compassionate, having a great heart and a strong sense of public duty. A man of very few words, patient, quite, thoughtful and intelligent, polite, a thinker and a good listener. Someone who carefully considers matters before expressing a view and very fair. All are important attributes for judicial work, which you have, to date, executed with aplomb and which the Society knows you will continue to do so in your new role.

Without wishing to offend any of your Honour's new colleagues on the bench of this Court, your Honour's elevation means that you now leave behind what is quite possibly one of the most difficult and busiest judicial roles in Western Australia and as a former prosecutor, I can attest to the difficulty that is inherent in trying to herd the cats of the criminal legal profession. I'm sure that the current manager of criminal lists in this Court, Hall J, will be all too happy to share his experiences with you of such a problem here. The Society also wishes new Chief Judge Sleight its congratulations and best wishes as he takes on your former role.

It was remarked at the time of you joining the District Court bench that your areas of practice at that point had been in civil litigation, personal injuries, trade practices, professional negligence, corporations and insolvency, yet not crime. You now bring to this court a wealth of experience in criminal trials, as well your background and experience in many other areas also being regularly dealt with by this court. We are sure your Honour will enjoy the opportunity to work in these areas once again.

As his Honour the Chief Justice has already mentioned, your Honour brings to this court, from your days in the amalgam and more recently as chief judge, a wealth of experience in administration which we are sure will be of great assistance to this court. In this regard, I note that while your Honour was at the bar, you represented to the Bar Association on a committee undertaking a comprehensive review of the rules of the Supreme Court. It appears that your Honour's elevation to this court has beautifully coincided with the re-emergence of this project and no doubt your Honour will be of great assistance to it.

In this vein, I note also that by joining the Supreme Court, your Honour will, once again, be working with that great reformer, Principal Registrar Gething. Exciting things await for this court no doubt. The Society congratulates your Honour as one of its own on your appointment as a justice of this honourable court and we wish you, your wife, Lesley, and family, our best wishes and gratitude in taking on such an important new responsibility. May it please the court.

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

P.D. QUINLAN SC, MR: May it please the court. It is a great privilege for me to appear on behalf of the Western Australian Bar Association to welcome your Honour as a justice of this honourable court. The bar extends its warmest congratulations to your Honour on this new chapter in your Honour's already long and distinguished legal and judicial career. We also extend those congratulations to your Honour's family, including your wife, Lesley, and your Honour's parents and children, all of whom we are grateful to see are able to be here today.

Formal occasions such as this generally fall into one of two categories: they are either well-wishers, and sometimes good luck, for the judicial task ahead; or alternatively, grateful acknowledgment for services rendered at the end of a judicial career. Coming, as your

Honour does, from the District Court, today's sittings combine both the well wishes of a new beginning and the acknowledgment of an already long and distinguished career. The only part that can safely be left out, of course, is good luck; for, as has already been remarked, your Honour's firmly established reputation as a fine judge in terms of temperament, legal skill and experience, is such that no luck is required.

Your Honour leaves the District Court after more than 14 years of service, including almost five years as Chief Judge, making your Honour, as of Wednesday this week, the longest serving judge on the court. It is as well on this occasion to reflect upon the changes that have occurred over that time. Western Australia itself has changed a great deal over that time with a large increase in the population and an even larger increase in the size and complexity of its economic activity, and along with that change, the courts have had to adapt to an ever-increasing workload in both size and complexity.

For example, when your Honour joined the bench of the District Court in 2001, there were then 21 judges, including the Chief Judge. Over the period of your service on that court, that number increased to 28, with judges now allocated not only to the Children's Court, but also to the Prisoners Review Board and the State Administrative Tribunal. It is, therefore, something of a coincidence that today your Honour again joins a court of 21 judges, including the Chief Justice. Whether, and if so when, that number might change, of course, remains a matter of ongoing attention by the court, the government and the profession, but the changes your Honour has already seen illustrate the ever-changing demands placed upon the third arm of government.

Those demands are a matter about which your Honour has been acutely aware, particularly in the last five years as Chief Judge of the District Court. In that regard, your Honour leaves the court in excellent shape, both in terms of the collegiate and industrious character of the court, the quality of its judicial output and, let us not forget, the all-important KPIs of the Department of the Attorney-General. In that context, it's appropriate to record that your Honour also leaves the District Court in good hands with the appointment of his Honour Chief Judge Sleight, who the bar also acknowledges and congratulates today.

Hopefully, as the Chief Justice has remarked, your Honour will be spared the burdens of excessive administrative responsibility so as to be able to refocus

your Honour's talents on the task of trying cases between the State and accused and between litigants in the court's civil jurisdiction. That is a task with which your Honour is now well-familiar and to which, to use the Chief Justice's analogy, you can return like a duck to water.

What, however, might be some of the differences your Honour may notice in moving from the District Court to this Court? Might I suggest two. First, in the criminal jurisdiction, your Honour may notice the steadily increasing growth in the length of criminal trials in this Court. The explanation for that growth is many and varied and extend from changes to police investigations and prosecutorial disclosure, advancing new technology and the nature of the offences themselves, particularly homicide. Whatever the explanation, however, the growth in the length of trials is now a pressing reality.

By way of illustration, in the most recent comparable data I could identify from 2013, the average length of a criminal trial in the District Court was 3.3 days. In this Court, it was more than double, some 8.2 days. There is every likelihood that this trend will continue and it is one which imposes not only a burden on the work of the court generally, but on the individual trial judge having to meet the interests of justice, the efficiency and fairness of the trial process, the needs of jurors and the expectations of the community.

On the civil side, can I suggest that your Honour may notice something of a change from the still dominant orality of the District Court civil jurisdiction where the judge usually hears a witness' version of events for the first time while they are in the witness box. Your Honour will now have to contend with the lengthy and carefully prepared witness statement as evidence-in-chief, cross-referenced with the ubiquitous and often oppressive trial bundle running to seemingly endless volumes of lever arch files. Lever arch files which the Honourable Peter Heery AM QC remarked when as judges of the Federal Court "form ramparts behind which the embattled judge cowers."

These new potential challenges in degree, if not in kind, your Honour will no doubt approach with the same care, patience and expertise for which your Honour is widely acknowledged and rightly known. The courtesy and calm with which your Honour discharges your judicial responsibilities, in particular, is no mere personal virtue, although it is no doubt that. It is also an indispensable feature of the exercise of the judicial function in (indistinct) judicial controversies between

State and citizen and between citizens. The calm and courtesy discharge of that function serves to ensure that justice is not only done by manifestly seen to be done.

Your Honour's appointment also again recognises your considerable legal abilities and analytical skill which has been developed over a long career spanning from the firm formally known as Stone James & Co, a decade as a member of the WA Bar Association and now almost a decade and an a half on the District Court. That has been a long and varied journey already and no doubt there will be other changes ahead.

Nevertheless, as your Honour commences this phase of the journey, your Honour may well recognise a few familiar faces from all of the other steps along the way. As has been remarked, your Honour's journey commenced at the firm that is now known as King & Wood Mallesons, although at a time when it bore the names of two great West Australians, Sir Edward Stone and Sir Walter James, and at a time, it might be added, when the name of the firm included the ampersand in the grammatically correct place.

It is appropriate then that as your Honour joins this court, your Honour will rejoin your former partners from Mallesons, Newnes and Corboy JJ. Your Honour also joins more than a few former fellow members of the WA Bar Association, alongside whom your Honour practised as a barrister for almost a decade and finally, of course, your Honour is greeted by the familiar faces from the District Court of Jenkins, Chaney, Mazza, Pritchard and Curthoys JJ. Indeed, it may be noted that there are few members of the court of whom it could be said that your Honour has not worked alongside in the past. That should, however, prevent no obstacle at all, as your Honour has a reputation for fitting in and adapting to new and unfamiliar surroundings with great alacrity.

I'm told, for example, that your Honour recently had cause to attend the 60th birthday celebrations of one of your fellow District Court judges, held on a small island not far off the coast of Turkey, but apparently part of the Republic of Greece. It is said that your Honour so charmed the local inhabitants, and were so warmly embraced by them, that you managed to arouse the jealousy of the guest of honour, who up until that trip had always regarded himself as the favoured lost son of the Mediterranean sea. As welcomed as your Honour was as an adopted son of (indistinct), so, no doubt, your Honour is now welcomed and valued as a member of this Court.

The members of the WA Bar again congratulate your Honour on your Honour's appointment. The community of Western Australia can be assured that your Honour will continue to discharge your judicial responsibilities with great distinction. We extend our best wishes to your Honour for the continuation of that judicial career. May it please the court.

MARTIN CJ: Thank you, Mr Quinlan. Justice Martino.

MARTINO J: Thank you, Chief Justice, Mr Tannin, Mr Keogh and Mr Quinlan. I have had the pleasure of sitting on or attending many welcoming ceremonies, but on only one occasion, 14 years ago, have I experienced the combination of pleasure and discomfort that comes from being the person that is the subject of generous speeches that are traditional on these occasions. Thank you for following that tradition today.

I'm delighted that people who contributed so much to my life are here today. My sister Anne-Maree, my two brothers David and Terry and I are deeply indebted to our parents. They provided us with love, guidance and support and made great sacrifices for us. I'm so happy that today, in their presence, I can acknowledge all they have done for us and thank them. My wife, Lesley, and I commenced our lives together over 40 years ago. I would not be who I am without Lesley. She has contributed to my life and to the lives of our children, Tim and Jane, in ways that are so deep that I cannot express them. All I can do is say, once again, how much we love her and how grateful we are to her. Soon after I met Lesley, I met her father Barney Devlin, her mother Heather and her brother Matt. They welcomed me and made me feel part of their family. I'm delighted that Barney is here today to share this important occasion.

My career in the law commenced with my articles of clerkship at Stone James & Co. Peter Foss QC was my principal. Peter, and all the partners of that firm, took very seriously and very conscientiously their obligations to train the firm's article clerks. I learnt lessons in clarity and economy of expression that I endeavour to continue to apply.

It is a great honour to be appointed to the Supreme Court. I do not diminish that honour in any way when I say that it's with some regret that I'm leaving the District Court. I know that Lesley feels that regret as keenly as I do. It has been an honour and a privilege to have served the people of Western Australia as a District Court judge. Important and difficult work is undertaken by the District

Court judges sitting in the District Court and the Children's Court, the State Administrative Tribunal and as Chair of the Prisoners Review Board.

When I joined the District Court, I was welcomed by Chief Judge Hammond, Judge Healy, Judge Kennedy, who became Chief Judge when Chief Judge Hammond was appointed as the first Commissioner of the Corruption and Crime Commission and all of the judges of the court. Judge Healy was extraordinarily generous in sharing his knowledge. He spent many hours working on an electronic bench book that was an invaluable tool for me and for all of the judges. Judge Healy's spirit lives on in the District Court, not only in the library that bears his name, but also in the cooperation and sharing of knowledge by the judges in the maintenance of the bench book, on which he did so much work, and in the sharing of precedence and other resources. I was deeply moved to receive a beautiful card congratulating me on my appointment to the Supreme Court from Mrs Nano Healy.

The judges would not be able to do the work that they do without the assistance they receive from their dedicated personal staff and the court staff. In the last five years, I've worked closely with the members of the staff of the Department of the Attorney-General who work at the District Court and who do work for the District Court. They have been a great help to me. They are conscientious, resourceful and innovative. I'm very grateful to them.

The Bible on which I took the oath of office as a judge of the District Court has become a symbol of my close connection to that court and the importance of the court to me. It was used for the readings for the wedding of my son, Tim, to his wife Richa. It was used again when I took my oath of office as a Supreme Court judge last week. The District Court has been a big part of my life and of Lesley's life. It always will be.

I'm now about to commence my work as a judge of this Court. I'm very conscious of the honour of being appointed as a judge of the Supreme Court and of the important work that I'm about to commence. I will endeavour to justify the faith that has been shown in me by undertaking that work to the best of my ability.

MARTIN CJ: Thank you Justice Martino. As that concludes the formal part of this morning's proceedings. The court will now adjourn.

AT 9.46 AM THE MATTER WAS ADJOURNED ACCORDINGLY

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