

## **Ceremonial Sitting for the Retirement of Justice Malcolm Gray**

**Friday 29 July 2011**

### **Speech delivered by Justice Gray**

Chief Justice Higgins, Attorney General Mr Corbell, Dr Boss Vice President of the Bar Association, Mr Opas President of the Law Society, are you sure that you are talking about the right person? It is very hard to respond to the compliments you have paid me. I feel the same way as Alexander Pope in that I have no doubt that you are complimenting me into a far better opinion of myself than I deserve. However, I choose to correct nothing.

I would wish to acknowledge all of you who have come to honour me with your presence when today I had thought that I might avoid this occasion but not had the wit perhaps to take a period of extended leave. To have done so would have denied me the pleasure of seeing so many of you here.

I have found appointment to this court both rewarding and challenging. The fact that it has a diverse jurisdiction covering what, in the courts of the

Australian States, would fall within the province of a District Court as well as exercising jurisdiction as a Court of Appeal from its own decisions has been particularly mind broadening.

It has meant a very significant workload on a court comprised of only four resident judges and a master. I have felt immensely privileged to have as my colleagues in my time with the court, the former Chief Justice Jeff Miles (who I am pleased to see here today) the late Terry Connolly (who is sadly missed by all those who knew him), the now Chief Justice Terry Higgins, Ken Crispin (who is presently repairing the depredations made by the vendor to his South of France house), Richard Refshauge, Hilary Penfold and the Master David Harper. I have enjoyed their friendship, good will and assistance. I am particularly conscious of the help that they have been to me and the collegiality that we have shared. Chief Justice, in particular, I respect your leadership and the support that you have given me. It is particularly gratifying to be part of a court with people who you admire and like.

I am pleased to see the Hon John Gallop here today. He was kind to me when I first came and he has demonstrated that galloping off into the sunset, as it

were, is not necessarily an end to your judicial responsibilities even 10 years later. It is also gratifying to see Alan Hogan, former master and acting judge to also be here. I am greatly honoured that Chief Justice French of the High Court, a former additional judge of this court, can be here today.

In the sitting where I was first welcomed to this court over 10 years ago I was very conscious of the courts position in the ACT. I was also conscious of the stature that it had achieved under Sir Richard Blackburn and the judges that had preceded me.

At that time appeals from this court were to the Federal Court. Also at that time judges of this court held dual commissions. That meant, that there was no restriction on them sitting on appeals from this court. When that ceased, with the Federal Government deciding that judges appointed to this court were no longer to be appointed to the Federal Court, the Territory government created a Court of Appeal comprising the resident members of this Court with additional judges from the Federal Court. It was shortly after I commenced my time here that this newly functioning Court of Appeal was created with Justice Crispin as its first president. When he retired I succeeded him, at the urging of

the present Chief Justice. I am grateful to Terry Higgins for his confidence in me. I have had immense satisfaction in presiding over the court of appeal.

Fortunately the additional judges from the Federal Court by their generous allocation of their time have made workable a system, which would not otherwise have been possible if it was reliant upon the limited number of the court's resident judges.

That points up one of the special features of this Supreme Court. That is the role that the additional judges from the Federal Court play in helping the court deal with its workload. It means that I have had the privilege of sitting with a number of persons who I very much respect, as well as being the beneficiary of their wise advice and experience. I thank them for that. More recently the court has been assisted by acting judges, my remarks extend to them as well.

The acting judges were appointed to assist the court with its workload in a situation where for some time the court's judicial complement suffered from

the untimely loss of Justice Terry Connolly and the retirement of Justice Ken Crispin.

I know the government is placing its faith in systemic changes to address the problem. Whether that faith is appropriate we apparently will have to wait and see. However, it is concerning that no short term solution is being considered until the longer term effect of these changes are evaluated. In both civil and criminal matters the time for matters to be heard is still unacceptably long. Figures related to the impact of the acting judges on the workload indicate some impact but without additional judicial resources the court is going to struggle to deliver justice in a timely fashion.

That is enough editorialising. If it might be permitted, some general reflections.

My career in the law commenced when I first went into partnership in a country practice in Mount Gambier in the South East of South Australia. My

partner left to join the magistracy after some 6 months. Thereafter the steep learning curve and terror of the Limitations Act and running a trust account significantly moulded my character.

Each of my later appointments thereafter increased my experience but more importantly brought me into contact with people of great legal erudition and learning.

I had, as I said at my appointment ceremony, the privilege of being articled to the Hon Dr Howard Zelling. The Hon Andrew Wells as Crown Solicitor and Solicitor General, the Hon Brian Cox who then succeeded him as Solicitor General (and both later judges of the South Australian Supreme Court) influenced me at the Crown Solicitors Office. My formative years in the law were dominated by the Bray court, Dr John Bray, Dame Roma Mitchell (the active patron of the Chambers I eventually joined), George Walters and of course Howard Zelling. All of those persons had a significant effect on my career in the law and I pay tribute to them for that.

During that time I became a reserve officer in the legal corps and the boundaries of my experience in the law and matters military were greatly expanded. Mind you, the acronym I was given on the military task force does not necessary reflect that. That acronym was DADFA. If I tell you that the DAD stood for Deputy Assistant Director you can probably guess the rest.

My appointments as Solicitor General for South Australia, Senior Public Defender and the Crown Advocate for NSW, Chief Counsel for the Legal Services Commission and member of the National Crime Authority were all positions that gave me varied and different experiences and insights.

I particularly enjoyed my time with the Public Defenders in NSW. It introduced me to the NSW bar and the company of especially skilled and dedicated advocates. I am particularly pleased that one of my fellow public defenders, now District Court judge, Steve Norrish can be here today.

That experience in being associated with the NSW bar and my latter time at the bar in South Australia I have found invaluable in appreciating the assistance that the bar and the profession generally gives to the bench with the quality of their advocacy and professionalism.

Canberra and its community is well served by its Magistry and Administrative and Civil Appeals Tribunal Members. I am pleased to see so many, present and past, here this morning.

Canberra has given me many opportunities to be involved in its community. I have always had an abiding interest in the arts, particularly the performing arts because of the ability of the arts to question and affirm our culture.

My time on the Board of the Cultural Facilities Corporation has been immensely fulfilling in being part of an organisation that is responsible for managing and developing cultural activities in the Territory. I am pleased that the Chair, Professor Don Aitkin, and the CEO Harriet Elvin are here today. Despite the shadows which creep over all successful organisations in the form of seeking to fix something that ain't broke, I wish the Cultural Facilities Corporation well for the future.



The community of Canberra has been very welcoming. In what The Canberra Times has recently unkindly described as my veteran status, I have developed a probably unhealthy but abiding interest in playing tennis.

I am a little like the older citizen whose doctor suggests that tennis might be a suitable exercise. I then found that when playing I would see the ball coming towards me and my brain would react by immediately saying “To the corner! Backhand! To the net! Smash! Go Back!” However, what happens next is that my body says, ‘who me? You must be kidding’. Nevertheless over my time here I have obtained immense enjoyment from fumbling around on a tennis court enjoying the company of a diverse group of fellow travellers.

My wife Laura and I are extremely grateful to be able to enjoy the company and friendship of so many in the Canberra community. To all who have helped us feel at home and part of the community here, we express our heartfelt gratitude.

I found those who practice in the legal profession in Canberra to be of great assistance in the courtesy and professionalism that they have extended to me.

That comes from what I perceive to be a strong commitment to justice and public service. My task has been made much easier because of it.

I would wish to expressly acknowledge all of the assistance that I have been given by the Court staff and particular the Registrar, Annie Glover, the registry staff, the library staff and the Sheriff's officers. For almost all of my time here I have been supported by Judith Breen as my personal assistant. She has been quite incredible in her qualities of diligence, professionalism and loyalty, enabling me to cope with all my real or imagined crises. I am particularly fortunate that she chose to stay with the court for as long as she did, eventually having to leave as (in public service jargon) a 54/11 retiree. I, as well as John Gallop am a fortunate beneficiary of her practicality and solicitude.

As to my associates, Heather Collins, Tara Ehsani, Will Lehane, Selina Hart, Joanne Howski, Mark McCormack, Tim Crispin, Sarah Bassiunoni, Jessica McLaren, Monique Zheng and Duncan Harrington. They have all shown immense patience and indulged me in my tyranny. They have been assiduous in researching and correcting my judgments. I have valued their comments

and reactions and learnt a lot from them. I add that, mostly they have managed to get me into the right courtroom although there was one to whom I had to present a compass on departure (you will note the gender neutrality). All my former associates have my very best wishes for the future. I am sure the legal profession will be all the better for their participation in it.

To my family, may I publicly express my debt and gratitude. All 4 of my children, Rebecca, Sarah, Anna and Toby are here today perhaps to see the conclusion of their relentless quest to bring me up, although I am sure that they will not give up. There is one grandchild here today, Ava. It seems that she is also being instructed to follow in her parents footsteps. I am very proud of my children and they have all contributed their bit in giving me the delight of grandparenthood.

To Laura who I brought here from her safe and settled employment and lifestyle in Adelaide, I thank her for her unflagging love and support. I will now be far more available in evenings and at weekends and she will have my undivided attention. She might however fall into that category of people who should be very careful about what they wish for.

To my successor John Burns, I wish you every success in your task. I hope that you find it as challenging and rewarding as I have. As for myself I need to reflect on what is next. Thank you all.