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A Practitioner of the Supreme Court of South Australia

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JUDGES OF THE SUPREME COURT

The Honourable Leonard James King, Chief Justice.

*The Honourable David Stirling Hogarth.

The Honourable Roma Flinders Mitchell, C.B.E.

The Honourable George Henry Walters.

The Honourable Howard Edgar Zelling, C.B.E.

The Honourable William Andrew Noye Wells.

The Honourable Alexander Keith Sangster.

The Honourable Samuel Joshua Jacobs.

The Honourable James Michael White.

The Honourable Christopher John Legoe.

The Honourable Brian Rothwell Cox.

The Honourable Robert Finey Mohr.

†The Honourable Roderick Grant Matheson.

‡The Honourable Donald Carter Williams.

ACTING JUDGE

§The Honourable Donald Carter Williams.

ATTORNEYS-GENERAL

The Honourable Christopher John Sumner, M.L.C.

The Honourable Kenneth Trevor Griffin, M.L.C.

*Retired, 14th September, 1979.

†Appointed, 9th August, 1979.

‡Appointed, 23rd March, 1980.

§From 28th September, 1978 to 22nd March, 1980.

MEMORANDUM

A special sitting of the Full Court was held on Friday, 14th September, 1979, on the occasion of the retirement of the Honourable Mr. Justice Hogarth.

THE HONOURABLE THE CHIEF JUSTICE: The purpose of this special sitting of the Court is to mark the retirement of our friend and judicial brother, Mr. Justice Hogarth. He is the longest serving Judge on this Bench, having been appointed a Judge of this Court on 16th July, 1962. That appointment was the culmination of a very distinguished career in the legal profession.

His Honour graduated in law at the University of Adelaide in 1931 and was appointed a practitioner of this Court on 19th December of that year. He obtained an Honours degree of Bachelor of Law in 1935. He did not complete, I understand, the course which he had undertaken for the degree of Bachelor of Arts at the University of Adelaide and, presumably, because he is a man who does not like loose ends, I understand that he intends to tie up that particular loose end during his retirement.

His Honour's legal career was interrupted by the war. He served in the A.I.F., and he spent four years or thereabouts in captivity, mainly in Germany, as a prisoner of war. His Honour is therefore one of very few Judges who have had personal experience of prison, and, in consequence, an understanding based upon actual experience, which, fortunately, is denied to most of us, of just what a prison sentence means to a prisoner.

After the war his Honour resumed legal practice and continued until his elevation to the Bench to practise as a partner in the same firm, which I shall call for brevity and convenience Thomson & Co., although the firm name underwent some changes during that period. One of his partners during a great part of that period was Sir Bruce Ross, and I am particularly pleased to see that Sir Bruce, with no small effort and discomfort, has been able to get here today. He is particularly welcome on this occasion, which I am sure means a lot to him.

His Honour quickly made his mark in the post-war profession. His career coincided with the period in which the litigious side of legal practice was dominated by the motor car. He became a leader in the field of personal injury cases, particularly in the role of counsel for the defendant. He was appointed Queen's Counsel in 1957 and had a busy practice as leading counsel until his appointment to the Bench. His Honour was an extremely active and popular member of his profession and he took an active interest in its well being. He served as a member of the Law Society Council from 1954 and he was President of the Society for two years from 1959 to 1961.

This occasion of his Honour's retirement is a poignant one, not only for Mr. Justice Hogarth but for those of us who are losing him as a colleague. I feel the poignancy of the occasion keenly. I first became closely acquainted with his Honour when I was establishing myself in legal practice on my own account as long ago as 1952. I took the room

next to the suite occupied by his Honour's firm, which was then Thomson, Buttrose, Ross and Lewis. He was instrumental in arranging with his senior partners for me to have access to their well-stocked library, and he assisted me with advice and countless other kindnesses during a rather difficult period in my own career. Indeed throughout my career in legal practice his Honour was unflinching in his warmth and goodwill towards me, as I am sure he was to all his professional brethren. When I was appointed to this Court in 1975 my chambers were located next to Mr. Justice Hogarth's chambers and he showed me the same generosity and kindness as he did when I began practice on my own so many years before. I cannot express adequately my gratitude to Mr. Justice Hogarth for the support and encouragement which as Senior Puisne Judge he has given me since I assumed my present office.

His presence amongst us will be greatly missed by me and I know by all members of the Bench. He is a warm and good friend to all of us.

His Honour's long and distinguished judicial career has been marked by learning and wisdom and above all by humanity. That is the quality which is the hall-mark of his judicial work and it is the quality by which we shall all remember him. Every person who came before him from the injured plaintiff in an accident case to the prisoner about to be sentenced was the object of genuine human concern on the part of his Honour. Moreover, he has the capacity for making that concern felt by the person who is its object. Even the prisoner receiving his sentence was in no doubt that the Judge, however much he disapproved of his conduct, felt concerned for him as a person, and very often a person greatly in need of compassion and understanding. How much more human would be the visible face of justice if we could all possess that quality of humanity and the capacity to communicate it to others to the same degree as our colleague who is about to leave our ranks.

Mr. Justice Hogarth's judicial and personal qualities will be greatly missed. His many interests outside the law, including a life-long interest in languages and education, equip him well for retirement. Moreover, the public positions which he holds, particularly in the field of education, will provide an avenue for continuation of that service to the community which has been a feature of his life.

We wish Mr. Justice Hogarth a long and very happy period of retirement and we also extend to Mrs. Hogarth our very best wishes for the future.

THE HONOURABLE THE ATTORNEY-GENERAL: If the Court pleases: I am very pleased to be here today on behalf of the Government and community of South Australia to pay a tribute to your Honour Mr. Justice Hogarth, whose retirement is marked by this sitting of the Full Court.

Your Honour has, as our Chief Justice has said, an outstanding record of service to the South Australian and Australian communities, whether as a practising lawyer, in your war service, positions held on the Law Society, your connections with educational, sporting and other community groups, and, of course, in your position on the Supreme Court bench.

Your Honour has spent almost half a century as a member of our profession since you were admitted to the Bar in 1931. The changes that have taken place during that time have had a remarkable impact on our society. It is often said that we live in troubled times, the future is bleak, yet at the time of your admission to the Bar the great depression had commenced and was soon followed by the second all-engulfing war of this century. Undoubtedly, retirement after fifty years active professional life gives the opportunity for a little historical reflection and the capacity to see the problems of today in perspective.

One of the greatest changes that has occurred has been the technological revolution, the development of an increasingly complex society. In the law there has been a great growth in the last fifty years in the rules and regulations that govern society, an increasing tendency for Acts of Parliament to be expressions of general principle and the detail left to subordinate legislation of one kind or another.

It is fashionable in some quarters to lament this development. Perhaps there ought to be a better way of doing it, but is it not a product of an increasingly complex society and the demands that the community then makes for adequate guidelines to ensure civilised living? Living closely together in urban societies requires different and more complex rules than was necessary when society was primarily rural. Legislation on planning and the environment, consumers, the corporate sector, safety in industry, product safety, food and drugs, for instance, is surely a product of this complexity and the need to ensure the long-term community interest is protected.

To many, a judge appears to be a remote figure, somewhat crusty, using terms of trade which are difficult to understand, and closeted away from society surrounded by his books. I am sure that this image is not in most cases justified, but particularly not in the case of your Honour Mr. Justice Hogarth.

You have said recently that human relations are the most important thing in life. You were a very human judge. If I ever found myself in the unfortunate position of being a litigant instead of counsel and came before your Honour, I am sure I would go away feeling that you lived up to my idea of what a judge should be, thoughtful and considerate. You have a capacity to put people at ease, something even more important in a court room than in some other situations because of the strangeness of the surroundings to most people. Your Honour's humanitarianism will be long remembered by all who have had occasion to appear before you, either as counsel, litigant, or accused. Your position has never inhibited you from being approachable or from giving your advice and counsel to younger members of the profession when it has been sought.

Your Honour has been motivated by the best qualities that our civilisation in its better moments produces—community service, tolerance of different points of view, compassion, a belief that knowledge and reason can govern the conduct of human affairs. Of course, your Honour, in the profession that we share, you have had the advantage of the rational traditions of the law and the comparatively tranquil atmosphere

of the Court. Unfortunately in my other profession, if you can call it that, such conditions do not exist.

I have three particular personal recollections of your Honour. First, at one time I would occasionally dine at Balfours Café and I remember your Honour, and indeed many other members of the profession, as regulars. I was surprised to hear from what you said last Wednesday evening that you still dine there. For myself, I have refused to go back since they did away with the real thing.

The second, and I am sure that you do not recall it, but I had my first contested case in the Supreme Court before your Honour in 1968. I doubt whether it had anything to do with me, but I am happy to say the result was satisfactory.

My other recollection is in connection with your means of travelling to work. We have heard much recently of your habit of walking. However, I have a feeling that at one time your Honour at least occasionally travelled by other means. As an impressionable law student at Lincoln College in the early '60's I occasionally caught the bus to the city from North Adelaide and not infrequently would see your Honour on it. To have a Supreme Court judge riding on our buses seemed to me at the time to be a tribute either to the egalitarian streak in Australian society or to the standard of our bus services. Perhaps the least said about that today, the better.

I am sure that your Honour would not really know the meaning of the word retirement. At one level I know that your Honour the Chief Justice, in your efforts to reduce the waiting time for cases, might be interested in commandeering Mr. Justice Hogarth to accept a commission to go on circuit from time to time.

Your former brother Mr. Justice Bright chairs a committee on the rights of handicapped people. He has stated his intentions of returning to academia. I understand that you have similar intentions. Your Honour's interests have never been confined to the law and I am sure that the community will continue to welcome your services.

Your Honour, you are a very notable South Australian, well loved and respected by the community. I am very grateful of the privilege given to me today as Attorney-General to be able to thank you on behalf of the South Australian Government and community for your service and wish you well in your new pursuits.

THE PRESIDENT OF THE LAW SOCIETY (MR. E. P. MULLIGHAN Q.C.): Your Honour Mr. Justice Hogarth said on another occasion recently that your career in the law had spanned almost fifty years. During all of that time you have had the deep respect of the profession and its affection. Consequently it is inevitable that there should be a sense of sadness in the profession on the occasion of your retirement, which, however, is mitigated by the knowledge that your Honour will now be able to pursue your many interests at greater leisure.

The Law Society is very grateful for your long service as a member of the Council and as treasurer and president. Also you were a member of

the Executive of the Law Council of Australia and vice-president of the International Commission of Jurists.

Your Honour had a keen interest in the wellbeing of your colleagues in the profession and served them most capably. Your sincere friendship to all, including the young, was greatly appreciated.

It is the view of many that one of the main tasks of the Law Society, at least at the present time, is to provide continuing legal education of the profession. There is no denying the need for such education and the Society does play an important role in this regard. In a sense your Honour pioneered the continuing legal education of the profession in this State. You were a foundation member of the Law Society Committee which first undertook that task.

Your Honour practised as an amalgam for some twenty-six years interrupted only by war service. As has been mentioned, you took silk in 1957 and only five years later you were appointed to this Court. Your work at the Bar was distinguished and successful, your service as a Judge, and as Acting Chief Justice at different times, has been outstanding. You have greatly enhanced the Court, and your contribution to the common law has been considerable.

Your Honour has many remarkable qualities, and due to the strictures of time I only mention a few. Your scholarship and sound judgment are enshrined in the law reports and I need do no more on this occasion than acknowledge them. The profession has been greatly impressed by your Honour's approach to judicial work. Always, you went to great lengths to ensure that counsel, parties and witnesses were at ease in your court, at least as far as that was possible.

At the 20th Australian Legal Convention, Sir Robert Megarry observed that the most important person in court is the unsuccessful litigant. The particular courtesy and consideration shown by your Honour to those who appeared before you ensured that the unsuccessful litigant had every facility extended to him and had every opportunity to be otherwise.

Your friends and colleagues have marvelled at how your Honour turned the dreadful experience of being a prisoner of war, in the oppressive conditions as they were, into a positive experience. You undertook extensive study as an external student of the London University, from which you gained your Bachelor of Arts degree in 1949. Your spare time was used in the study of Spanish, German, French and Japanese. This illustrates your Honour's approach to life generally. It would also pose some problems for the slack interpreter that may have appeared before your Honour from time to time in court.

There has always been a real sense of decency and honour about everything that your Honour has done. Much judicial work involves the solving of human problems and your Honour has approached that task with humanity.

On the occasion of the retirement of the Honourable Mr. Justice Bright I mentioned his unflinching patience and tolerance and his impeccable judicial manners. Those remarks are equally applicable to your Honour.

It has always been apparent that your Honour has greatly valued your secure family life and you have benefited considerably from the dedicated support of Mrs. Hogarth and the other members of your family.

The Law Society wishes you a long and happy retirement which you so richly deserve. Of course, retirement for your Honour will not be rest, in view of your proposed academic pursuits, but at least your Honour may now be entirely selective in your future work.

The Society extends its warmest wishes to you and to Mrs. Hogarth.

THE HONOURABLE MR. JUSTICE HOGARTH: Thank you Chief Justice, Mr. Attorney and Mr. President, for the most kind remarks which you have made about me. I detect warmth in your remarks which really touches me. And thank you all, my friends, for doing me the honour of coming here today. As I look around the court room in which I have passed so many hours of my working life, I see old friends and I see new friends; and I am grateful indeed that you should have come here to share with me this moment which marks so notable a milestone in my progress through life. You notice I say "milestone", not a kilometre-stone. I certainly will not say 'kil-o-metre-stone'. I am particularly honoured with the presence here of a man whom we all respect, the Lieutenant-Governor.

It is natural, I suppose, that I should look back over my life at such a time, and when I do so, what impresses me most is the realization of the great help that I have had at all times from so many men and women of good will. I have been fortunate in my family and in my friends. It is not an occasion to name all those to whom I am so much indebted, but I must mention my mother, on whose persuasion it was that I eventually, with some reluctance, decided to study law. She said I had to do something connected with books. I must mention the principal to whom I was articled, Mr. Harry Thomson, later to become a King's Counsel — that is the father of our friend Mr. Cedric Thomson — from whom I learned the rudiments of conduct in court, and from whom I learned something of the art of cross-examining the hostile or reluctant witness; and his partner, Mr. Ian Buttrose, a charming man and skilful lawyer who taught me so much on the conveyancing side. Then came Sir Bruce Ross, who has already been mentioned, and I am delighted to see him in court today. He joined the firm on Harry Thomson's death in the early 1930's; and, apart from war years, I was associated with him first as a staff solicitor, as it is now called, and then as his partner until he was appointed to the Bench in 1952. He retired in 1962, and it was to fill the vacancy occasioned by his retirement that I was appointed to the Bench.

When I was appointed to the Bench myself, none made me more welcome than the then Chief Justice, Sir Mellis Napier, and Sir Roderick Chamberlain, whom also I am delighted to see in court today. He was a sure and certain support in times of stress after my appointment.

And one other former member of this Court is with us today—our former Chief Justice, Dr. Bray. I had the very happiest association with him during his term on the Bench and I thank him for being with us today. I need not comment further on him because it is not so very long ago that I was

extolling his virtues and embarrassing him in the same way that I have been embarrassed this morning. My views are reported in the South Australian State Reports, volume 19, at p. v.

I have a cable from my former judicial brother Bright and his cable will have a message for at least one other person who is in court—"You can't go on. You must retire". That is a quotation from an old advertisement which used to appear in the *Sunday Mail* about a person who had a blow-out. The wife says, "Charlie, Charlie, send a wire, we can't go on, we must retire"—and the reply came back: "No, no, if you'd save time, my own, To Walter Turner's telephone. Just phone him up, he's always there, The Tyre Specialist, Hindmarsh Square." I don't believe I am giving an advertisement, because I think the company is no longer in business.

And over the years since the war I have had the unfailing support of my wife, whom I want to thank publicly on this occasion for the help she has given me both at home and in the affairs which go towards helping a man to some extent in public life to fulfil his functions and to make a happy home for me and the other members of my family.

My first judicial experience was not in this Court, but as a member of a Court of Inquiry on the troopship *Stratheden*, as we proceeded up the Red Sea. One of the men on board is now at the Bar, and I am referring to Mr. Bagot; he is looking at me and wondering whether it was anything to do with his conduct. It was a serious act. I was sitting on a Court which was occupied by a man who was later to become a member of the High Court and the Privy Council, the Right Honourable Sir Victor Windeyer. He was the President of the Court. It was at a time when the Italians occupied the coast on our left—the Italians were our enemies at that time—and although they did not have any surface craft that was going to be a threat to us, they were believed to possess submarines and they certainly had air craft, as one could be seen circling overhead but out of range of our anti-aircraft guns, while the court was sitting. Because of this we had to carry with us all the gear that was necessary in an emergency; we had to have our hats, water bottles and life jackets, and so on. This was, as I said before, a serious matter; it concerned a breaking of the bath. The ship had run dry of beer as we approached Colombo and the troops had brought a keg on board and the problem arose, "how to keep the beer cool". This keg was lowered into the bath and the bath was filled with water, and in the course of this procedure the bath was broken. The Court sat to determine what had happened and how much had to be paid to the Company. Our main witness was Sir James Irwin and he gave the opinion that the value was £5, and we returned our finding accordingly. That was my first judicial experience.

When I came to the bench I was oppressed by the fear that I would find myself cut off from my old friends, particularly old friends of the legal profession. I am happy to say that this did not happen. Chamber appointments in particular enabled me to keep in contact with old friends and to make new ones. I hope and believe that my friendships within the profession have not faded during the last seventeen years; and that on occasion they have even survived that experience, so shattering for counsel who is convinced of the strength and justice of his case, to find that I could not see the light

and was wrong-headed enough to give judgment in favour of the opposition.

I hope that my friendships will continue with all my old colleagues, and not only members of the legal profession practising at the Bar. I have been fortunate in having been associated in my chambers with a series of fine young people as associates and secretaries and with my three stalwart tip-staff friends, all of whom are here today, and with members of the Court staff generally. We have been a happy family at the Court but I suppose that I must regard myself today as an oldest son who has come of age and so due to leave the sanctuary of the home and to go out into the cold hard world. I have been touched by the number of members of the staff who have come to me with a troubled look on their face to say they regret they will no longer be seeing me about. This is unnecessary, because I have a project in mind which involves my having to do research through the records section, and I think they will see me gliding around the passages rather in the way that is attributed to the phantom of the opera.

Again I am fortunate in another way. Those of you who read the local press will know that I embarked upon the law as a means of entry into the diplomatic life; and I wanted to do that because it would have given me an opportunity to engage in my flirtation with foreign languages. Now I shall be able to do so to my heart's content.

I leave the active practice of the law with regret but I look forward to my life at the university with excitement. I am proud that I have been able to to serve the law so long. In the course of doing so I developed a deep admiration for it, not as an end in itself but as a means of attaining justice as between man and man, as between man and State. It is a system which has evolved over the centuries through the efforts of men of goodwill whose aims it was to translate abstract notions of justice into practical rules for its attainment. The legal profession is a great profession and it will remain so so long as its members continue to act honourably in the interests of justice and of their clients, so long as its motivating purpose is to serve the public and to play its part in the administration of justice according to law.

I leave the Court, as I said, with regret but with the sure and certain knowledge that its fine traditions will be maintained by my friend the Chief Justice and my other friends and colleagues on the bench. Mr. Bollen, in proposing the toast of "The Bench and the Legal Profession" at the Law Dinner two days ago predicted that I would not cease to be associated with the profession. If my intentions are fulfilled he will prove to have been correct. To all of you, therefore, I say not farewell, but only *au revoir*.