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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 George Henry Walters.

The Honourable Howard Edgar Zelling.

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 Derek Willoughby Bollen.

The Honourable Robin Rhodes Millhouse.

The Honourable Elliott Frank Johnston.

†The Honourable Graham Clifford Prior.

## ATTORNEY-GENERAL

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

\*Retired, 1st March, 1984.

†Appointed, 1st March, 1984.

## MEMORANDUM

A special sitting of the Full Court was held on Wednesday, 29th February, 1984, on the occasion of the retirement of the Honourable Mr. Justice Sangster.

**THE HONOURABLE THE CHIEF JUSTICE:** This special sitting of the Full Court is held to mark the retirement of Mr. Justice Sangster by reason of his attainment of the statutory retiring age.

His Honour was born at Semaphore and received his primary education at the State Schools at Nailsworth and Prospect. His secondary education took place at Adelaide High School. He studied law at the University of Adelaide and he qualified for the Bachelor of Laws degree at the young age of twenty. Later in life he undertook studies in accountancy and, having passed the necessary examinations, he was admitted as an Associate of the Federal Institute of Accountancy, later incorporated into the Australian Society of Accountants, and subsequently was admitted as an Associate of the Chartered Institute of Secretaries. He later became a Fellow of both bodies.

Mr. Justice Sangster was admitted as a practitioner of this Court in 1935. His career was interrupted, as were the careers of so many of his generation, by war. He had joined the South Australian Scottish Regiment before the war in 1938. He was commissioned as lieutenant in 1939. He was engaged on war service throughout the war and saw active service, particularly at Bougainville. He continued his association with the Army after the war on a part-time basis as courts-martial officer. He was promoted to the rank of major and transferred to the retired list just before his appointment to the bench of this Court.

Mr. Justice Sangster came to this bench after a long and successful career at the bar. The Attorney-General and the President of the Law Society will speak after me, and the features of that part of his Honour's professional life are best left to them. The Attorney-General will also, doubtless, refer to his Honour's public activities unassociated with the law and the President of the Law Society will, doubtless, refer moreover to his Honour's outstanding services to the legal profession and the Law Society through his involvement in the affairs of the Society, culminating in his term of office as President of the Law Society.

I trust that I will not be thought to be pilfering any of the thunder of the Attorney and the President if I make reference, because of my own personal involvement in it, to one episode in Mr. Justice Sangster's career at the bar and the signal public service which it entailed. In 1966 Mr. Sangster Q.C., as he then was, was entrusted with a Royal Commission to inquire into and report on what amendments should be made to the liquor licensing laws of the State. I had the honour to be counsel assisting

the Royal Commission and in that capacity had the opportunity of observing the Royal Commissioner's work from a unique vantage point. The Commissioner's conduct of that inquiry was a model of efficiency and expedition. I would doubt whether any Royal Commissioner has ever investigated social questions of such difficulty and complexity with such a combination of thoroughness and yet economy of time and of cost to the taxpayer and to the various interested parties. The report was a masterly exercise in balancing the various competing considerations and interests in a way which was fair to all sections of the industry and, nevertheless, produced a system which met the needs and wishes of the general public. Not all the Commissioner's recommendations reached the statute book—perhaps because there are considerations which must be regarded by legislators which are additional to those which are persuasive to a Royal Commissioner—but the substance of the recommendations in the report were incorporated into the *Licensing Act* of 1967. They gave South Australian liquor law a new direction and provided a liquor licensing system which was in accordance with contemporary ideas and which has served the public well. That episode in Mr. Justice Sangster's career will be remembered as a great contribution to the well-being of the State in an area of great difficulty and delicacy.

His Honour was appointed to this bench in 1970, first as an Acting Judge on 19th November, 1970 and as permanent Judge on 24th June, 1971. He has been an important influence on the work of the Court since that time. His Honour's intellect has disentangled complex issues and resolved subtle and difficult ones. His efficiency and innate sense of orderliness have enabled him to manage, with outstanding success, massive and complex material in the longest and heaviest of trials. Characteristic of his judicial work has been his promptness and decisiveness, judicial qualities of ever-increasing importance in view of the huge and increasing volume of the business of the Court. His willingness to respond to any request to take on work additional to, or different from, that for which he has been rostered has been of great assistance to me in the management of the work of the Court, and I express my appreciation of it.

The time has come for Mr. Justice Sangster after a long and arduous professional career to lay down his official responsibilities.

With characteristic foresight and thoroughness he has I know prepared for an active and useful retirement. He and his wife share interests and skills which form the basis of a long and happy retirement.

Mr. Justice Sangster, the Court expresses its appreciation of your contribution to its work over the past fourteen years and wishes you and your wife health and happiness in your retirement.

THE HONOURABLE THE ATTORNEY-GENERAL: May it please the Court, it is my privilege this morning to be present at the ceremonial sitting to represent the South Australian Government and to acknowledge on its behalf your Honour's service to the South Australian community, as citizen, soldier, teacher, advocate and Judge of this Court.

Your judicial career, as the Chief Justice has mentioned, has spanned just over thirteen years and it was in fact your Honour the Chief Justice who in November of 1970 welcomed you to this Court. At that time Mr. King Q.C., Attorney-General, remarked: "One of the features of your Honour's professional practice was your interest in the work of the accounting and secretarial professions. Your Honour had a deep interest and competence which all too many lawyers lack in the discipline of those professions."

I suspect that position still pertains, although it is probably worth reminding those contemplating a career in the law that the combination of legal and accounting skills is a valuable asset in an area of increasingly complex national and international commercial transactions.

Your Honour's qualifications as an accountant have contributed valuably to the work of the Court and tasks which the State has called upon you to do.

As a Fellow of the Australian Society of Accountants and a Fellow of the Chartered Institute of Secretaries you were well equipped to carry out investigations of a commercial or financial nature. The two investigations which preceded your appointment to the Bench were as a joint investigator of the affairs of Weymouth Guarantee and Discount Company Limited in 1968 and then in 1970 as Chairman of an inquiry into water and sewerage rating. In both these issues your legal and non-legal skills were invaluable.

A task which survived your appointment to the Supreme Court was as Chairman of the Third Party (Motor Vehicles) Premiums Committee. Since 1968 this role has meant quite severe calls upon your time. As a task involving some considerable public exposure and being a matter of community sensitivity your fifteen years' work on that committee has been greatly appreciated by the Government. I also appreciate, on a more informal basis, the work you have done from time to time in formulating proposals for reform of the accident compensation laws in a way which might contain the increasing costs to the community in this area. There is no doubt that this will remain of concern to Governments and the community for some time.

The Chief Justice has already commented on the Royal Commission which you carried out into the *Licensing Act* while still practising at the Bar. I trust that I will be forgiven if I also mention some aspects of that. That undertaking was the second major inquiry into liquor licensing in South Australia. The first had been carried out in 1879 and therefore your commission provided the opportunity for a full and timely appraisal of the law. It resulted in the current *Licensing Act*, although, as your Honour the Chief Justice has said, only after the Parliament had given considerable attention to your recommendations. The licensing laws are something about which everyone, including politicians, consider themselves an expert. The findings and recommendations which you made in 1966 were a blue print for the future which have stood the test of time despite the political compromises necessary to ensure their passage into law. The

predictions which you made about trends in licensing laws have proved true.

Licensing laws are again in the news. Social attitudes and the economic structure of the licensing laws have changed quite dramatically since your Honour's pathfinding report of 1966. The Act is therefore being looked at again in the light of these changes.

I trust that I might be permitted some personal recollections of that Royal Commission.

As the Minister who set up the current review of the *Licensing Act* I had recent cause to peruse your 1966 report. Appendix C contained a list of parties represented before the Royal Commission. Heading the list was The Adelaide University Union, represented by C. J. Sumner, President. The final entry in Appendix C was "Mr. L. J. King, Counsel, appearing as counsel assisting the Commission". However, I am not suggesting that the order in which counsel were listed bore any relationship to the contribution made to the Commission (except possibly an inverse one in my case).

But a perusal of the other names says much about the importance that the South Australian community attached to your deliberations and the conflicting interests which had to be resolved. It is a veritable "who's who" of the South Australian legal community. To name but a few: Bray Q.C., White, Blackburn, Matheson, Zelling Q.C., Wells Q.C., Mohr, Elliott Q.C., Jacobs Q.C., and Fisher, were some of the counsel and just a few of the counsel that appeared before you during that Royal Commission.

The second recollection is of my first appearance before your Honour during that Commission, which as I recall was at the opening hearing in the Magistrates Court building. I was a very inexperienced articled clerk and had the temerity to make some suggestions to your Honour as to how the Commission should be run. I was told, not uncharacteristically, by your Honour that that was not really my job.

Thirdly, my appearance as President of The Adelaide University Union was to argue for a licence for the Adelaide University Union and a reduction of the legal drinking age to eighteen. In your report your Honour dealt with this somewhat perfunctorily by saying, and I quote: "Positive submissions were made for reduction of the minimum age . . ." and then there was a list and we were second, "to eighteen years by The Adelaide University Union but I suspect having very much in mind its submission of a proposal for liquor at the Union where students aged from eighteen years upwards may be found." That was not the last time that your Honour had cause to dispose of a blatantly self-serving argument from a witness or counsel. Nevertheless, the new Act did eventually lead to the University Union obtaining a licence some nine years later and of course the drinking age was subsequently lowered.

Your Honour's capacity for hard and meticulous work as an advocate and as a Judge is well-known and respected. You have the capacity to get to the core of an argument quickly and to reduce it to its essentials. Those qualities are a prerequisite for a successful lawyer whether practising at the bar or at the bench.

May I again express the thanks of the South Australian Government and the community to you for your service on this Court and in the broader sense to the South Australian community generally. May I wish you and your wife a happy and fulfilling retirement.

MR. D. F. WICKS: May it please the Court, on behalf of the Law Society I join with the Honourable the Chief Justice and the Honourable the Attorney-General in extending to you, Mr. Justice Sangster, our best wishes on your retirement from the bench of this Court.

Your Honour's career in the law has spanned nearly fifty years and has been a distinguished one.

You were admitted as a practitioner in 1935 after having gained an LL.B. degree at the University of Adelaide and having served a period of articles under the late Mr. Ralph Newman.

Your Honour joined the firm of Moulden and Sons (now Mouldens) after your admission. Your practice was interrupted by a period of war service in the A.I.F. from the outbreak of war in 1939 until 1946. After the war your Honour resumed practice with Moulden and Sons until 1965 when you left that firm to practise solely as a barrister.

It is appropriate to note that your Honour was one of the founders of the independent bar in this State as we know it today—an institution which has maintained steady growth over the succeeding years to sixty or so barristers today.

Your Honour was appointed Queen's Counsel in 1962 and you were elevated to the bench of this Honourable Court in June of 1971, having before then served for a number of months as an Acting Judge.

While a practitioner your Honour gave extensive service to the profession over many years. You were first elected to the Law Society Council in 1959 and served on that body for a period of ten years. During that time you were active in the work of the numerous committees of the Law Society. Your Honour was elected President of the Society in 1965 and held office as such for a period of two years. In fact as I recall you were the President in office at the time when this State hosted the 14th Australian Legal Convention in 1967. During your period of service on the Council you also served on a number of standing committees of the Law Council of Australia.

Your Honour was chairman of the South Australian Bar in 1969-1970 and a member of the Council of the Australian Bar Association over the same period.

Prior to your Honour's appointment as a Judge of this Court you had for many years a well deserved reputation as an outstanding barrister in this State. At the bar you displayed a thorough knowledge of the law, a keen intellect and immense appetite for hard work, and an ability to put an argument with great clarity and precision. In the management of witnesses your Honour displayed exceptional skills as a cross-examiner.

I recall myself, as a personal recollection, masterly cross-examination which occurred in the case of *Smithfield Pastoral Company v. The Commissioner of Taxation*. I vividly recall the three Crown witnesses.

Each was different, each was a unique subject. The exercise would have made excellent production material for a television programme. It was a masterly performance of cross-examination and something which I think, as a junior practitioner, I will carry for the rest of my life.

In practice your Honour was recognized as having very considerable depth of knowledge and experience in many fields of law. Those undoubted legal skills were supplemented by sound knowledge of accounting which, as the Honourable the Chief Justice has already mentioned, you acquired by formal training immediately after the war when you were qualified and admitted as an Associate to the Federal Institute of Accountants, a body which was later incorporated into the Australian Society of Accountants. You were later admitted as a Fellow of that body.

As a Judge your Honour has brought to this Honourable Court many of the important attributes to which I have referred. Your Honour's judgments will be remembered for their clarity of thought, their precision and conciseness, and exemplify that agility of mind to which I have referred. Your Honour has made a significant contribution to the learning in the law which has come from this Court and I believe the State Reports offer a testimonial to that fact.

On behalf of the Law Society and the profession, I extend to your Honour Mr. Justice Sangster our best wishes on your retirement from the bench of this Court after what must be seen to be a long and distinguished career in an intensely demanding discipline, but one which nevertheless offers great satisfaction whenever it is rewarded with the certain knowledge that the job has been well done. To a barrister it is to win: to a judge it is to leave his mark on the development of the law. I suggest to those present that your Honour has left your mark on that development.

**THE HONOURABLE MR. JUSTICE SANGSTER:** Thank you Chief Justice, Mr. Attorney, Mr. Wicks, for your kind words. I thought once or twice I was listening to pleas in mitigation rather than reasons for judgment. I would not undo the good and careful work which each of the three of you has done in preparing your kind words just spoken by going over them *seriatim*, but I may be pardoned if I mention one or two chords which your words have struck in my own happy memories.

The Liquor Commission was an intense, but rewarding experience. I well remember when I was asked to do the job and said yes, it being my philosophy that as Queen's Counsel I was obliged without second thought to accept any work the Queen asked me to do through her representatives. My next question was, who would I like as my counsel assisting me and I made the obvious choice, to which the then Attorney said, "Well, had you not named him I would have suggested him", and whichever way it would have come about, I was very happy with the result and we had a lot of fun, mixed up with a lot of hard work that year. The result of it has been surprisingly happy for me in that the outline of my proposals became law and the areas where my proposals did not find favour with Parliament have caused the most difficulty, and

I never shirk the controversial statement. One of those areas was the drinking age, because I knew—and I think the advocate for the University knew—that a drinking age legally of twenty-one means actually of eighteen, but a drinking age of eighteen means actually of sixteen for boys and fourteen for girls, and if you ally that to something which I was told on oath by an expert at the Commission in 1966, that the louder the music the faster the drinking rate, because the drinking is not interrupted by conversation. So today you have a long word abbreviated by the young—who never use long words—to the short one of “disco”, with much noise, much drinking and no conversation, and most of it with people under the legal age, let alone under the recommended age. And the other area where my thoughts were not well-received—in one quarter, particularly not well-received—was that the licensing hours and conditions of clubs should, generally speaking, be matched by those of hotels and in particular, that lounge drinking should be available in all places that were licensed on Sunday afternoons after morning service and before the evening service—not necessarily for those attending both.

However, those have not been as *ex post facto* emphases of early recommendations, but merely of highlighting the happy recollections that I had of a year spent in the company of so many lawyers who made their name in other directions subsequent to that Commission and, as both of you have pointed out, many of whom sat, or are seated, on this bench.

I was—as with some of my colleagues—an Acting Judge before becoming a Judge. That is a hazardous occupation. If you become a judge and your services are not appreciated, the country is stuck with you until you either have to go or choose to go. But if you come up as an acting judge, it is like an apprenticeship and if you fail your exam at the end of it you might not get the job that you hoped to get then. I am happy to say that I only know of one case in history where an acting judge failed to make the grade, and that was many years ago and it had nothing to do with his judicial qualities, but some personal argument, and those of us who served an apprenticeship must have passed our exams.

It is true that I did a few inquiries in my time and one of them continued until recently, and that of third party insurance. It is a hot potato for anyone to pick up. The average motorist who is compelled to insure thinks he is being taxed to pay for other persons' liabilities. It is a long story to try and dispel that belief, and I will not attempt it. But there is a solution, in pursuit of which I have not only read material, but I have been to the places from which much of that material has come—New Zealand, Canada, United States, West Germany, Switzerland, in particular—and I have talked not merely to the lawyers and to the insurers, but to the proverbial man in the street of whom, as I said to somebody earlier today, I shall shortly become one.

The laws of any country must not only fit the needs of the people of that country but, by and large, must be accepted by them, and any change in the law, however intrinsically desirable, must, by and large, be acceptable to the community as a change, and this is what the Attorney and, before him, the Chief Justice, must have had in mind in talking of the

recommendations of the Licensing Commission being adapted by Members of Parliament to the need to get the law through the Parliament, because a recommendation is of the intrinsic worth of the subject. A passage through Parliament takes into account not merely what is desirable but what is likely to be acceptable, and that is not being critical of the politicians but being in praise of them for recognising one of the facts of life.

Mr. Wicks was kind enough to mention my work in the profession, including the Law Society. I don't know whether it still has a rule, but we did have in days gone by, that only one member of a firm was allowed on the Law Society Council at a time and my firm was represented on the Law Society for a very long time by Arnold Moulden and until his retirement I was not eligible to put my name forward for election to the Council, but nevertheless I was conscious of the Law Society's work. And I suppose I did my share of poor persons' legal assistance, for which in those days we received precisely nothing, except inroads into our time and valuable experience, and until the *Advertiser* changed its mind, possibly a mention on the Law Courts page of the morning paper.

The separate bar started off as a handful. There were only four of us who moved into 34 Carrington Street on the first day. I am told that sixty attended their annual meeting a day or two ago and I know from my experience on the bench that a specialist bar has advantages. I am not going to enter into any argument as to whether the advantages outweigh the disadvantages or whether any system is better than any other, but well trained advocates do make the life of Judges easier and they do a better job of representation of their clients which is their primary role.

I don't know whether I should let everyone into the secret of how to be a successful barrister but since I am now debarred from competing with you, I can be pardoned for doing so.

Mr. Wicks mentioned one of the cases I happened to win, *Smithfield Pastoral*. It did happen to involve more than \$10 of tax and it is true that I did happen to have a grasp of the facts. But the way in which I obtained that grasp was to go and see everything to which the case related; and the case related to land near Bowral in New South Wales, near Narrandera in New South Wales, obviously at Smithfield in South Australia, and near the border of England and Wales. And I went to each property. I saw each herd or flock or prize bull. I talked with the managers of each station. I travelled around the areas which had been sold and subsequently subdivided and talked to the people who arranged them. So that when I went into court on what could have been a long and difficult case for me, I not merely had my brief—which coming from the firm of which Mr. Wicks was a member, was a well prepared brief—but I had a visual, mental picture of the things I was talking about, so that I could never be trapped unable to find my writing on the subject and unable to fill it in in some other way. I could always fall back on a personal recollection of what I had seen or of the talks I had had with the people. And if a case is worth while it is worth preparing. And one of my present colleagues on the bench who was then a Master of the Court, once said

to me on taxation of costs. "Mr. Sangster"—of course taxation of costs meant justifying every page of your brief at so much a folio—"Your brief in this and other cases always seems to be rather full." I said: "Master, every brief of mine you have taxed has been a successful brief." So ladies and gentlemen of the bar, if you want to succeed, work. No other secret.

On my appointment to this bench I renewed my earlier oaths of allegiance to the Crown and undertook as a Judge to do right to all manner of people after the laws and usages of this State, without fear or favour, affection or ill-will. I meant those undertakings. I have been proud to sit as I do today, below the Royal Coat of Arms, and to have it displayed on my note paper. I have endeavoured to administer justice according to law, to the best of my ability and according to my own conscience.

I could not fail to notice that in the newspapers and elsewhere there have at times been some who have disapproved and others who have approved of what I have done, or have been reported as having done, on the bench. I have not however consciously sought either to avoid disapproval or to gain approval. I have merely tried to do my duty. I see no particular merit in that, however, for that is simply what the community was entitled to expect of me.

I have written a few judgments on the law, one or two of them have even survived on appeal. My attitude, however, has been that with so many Judges and so many cases putting so much pressure on both publishers and readers of law reports, it was better for me to go straight to the point and avoid excursions into legal byways.

I have been on the bench and before that in the legal profession long enough to have accumulated debts of gratitude. I seek the forgiveness of those whose kindnesses I do not particularize today. They know that I am grateful.

As a Judge I have been well served by a loyal and indeed I may say a devoted personal staff. Miss Kitson as secretary throughout, Mr. Berry and then Mr. Anderson as tipstaves, and a comparatively small succession of associates. I am sure that my wife would wish me to add her appreciation of their many kindnesses to her as well as to me.

On this my retirement, not only from the bench, but from the legal profession to which a retired Supreme Court Judge cannot return, I suppose that it would be permissible for me, publicly, to reminisce about the law and its people in my fifty odd years acquaintance with them. I say fifty odd because I went to a legal office in December 1930 and I have been mixed up in the law ever since, except for a stint in the Army and towards the end of that I was a legal officer.

I will reminisce but only by hazarding a few guesses as to how one lawyer's life must have appeared to those around him.

There were the early years of over-supply of young lawyers. Many of my contemporaries did not even get a start in the law. Most of those did very well elsewhere. Indeed some of those in that category would make a *Who's Who* in the entertainment industry.

There were the war years. I believe that I was the first Adelaide lawyer to go. My unit began security duties on 11th August, 1939, three weeks before war was declared. I believe that I was the last to return. I was demobilised on 5th April, 1946, six months after the war ended. Our daughter knew me only as a photograph on the radio cabinet.

There followed the poor years with more lawyers than legal work. More because so many of us had come back from the war and when even junior partners laboured for rewards in heaven rather than on earth.

There were the lonely years, when each modicum of professional success made a further inroad into family life.

And finally, there were the judicial years, ranging from elation to frustration. I joined the bench when Judges were fewer in number and rather well received, even at official and sporting functions. I have stayed long enough to be plagued by strong beliefs as to what the law should be and how it should be administered and by my inability to do much about either. And I hasten to add that I shall not behave like the palace butler and “spill the beans” on my retirement. Those beliefs go with me unpublished.

Indeed, I have heard it said on each retirement at which I have been present—and I hope that there might be the odd one or two who will say it on mine—that the bench will not be the same without him or her or them. Of course the bench will be the same without me or those who have already gone—and without those who will go—for the bench, and particularly the Supreme Court, is the only basic protection the community has for freedom within the law.

It is customary in a life which is full of urgent appointments, which is full of fine print in the newspapers and many loud words on the television set, particularly in the advertisement sections, for people to get out of the habit of sitting down and just thinking, which, if ever you get the chance—from what I can recall of the few opportunities I have had to do that—is a very worth while thing to do.

How many of those present today who have any views about the quality of the bench at any time as compared with any other time would wish to change our bench for the law courts of any other country of which they have read or to which they have been? And all I can say about those who are tempted to compare individual members of the bench or, for that matter, of any organization, is to say that when you are talking of someone at the end of his service and you are looking at someone else at the beginning of theirs, please think back to what those who are going were like when they came and you will find the comparisons are not necessarily in favour of those who are going. And, above all, those of you who have shown, and those of you who have not shown, but have felt some happy feelings towards my service on the bench, please give to those who remain your complete loyalty and support.

I have mentioned how my life as a lawyer must have looked to those around me. I am grateful that my wife has put up with me for all the time since quite early in that history but, of course, for her there is now the

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risk of worse to follow—that of a retired husband home for lunch—and I believe that plans are already afoot to see that that does not happen every day of the week.

At midnight tomorrow I shall become a septuagenarian pensioner. I have been told that the devil finds work for idle hands to do. I look forward to meeting the fellow.

Farewell to you all.