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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 Samuel Joshua Jacobs.

The Honourable James Michael White.

The Honourable Christopher John Legoe.

The Honourable Brian Rothwell Cox.

The Honourable Robert Finney Mohr.

The Honourable Roderick Grant Matheson.

The Honourable Derek Willoughby Bollen.

The Honourable Robin Rhodes Millhouse.

The Honourable Elliott Frank Johnston.

The Honourable Graham Clifton Prior.

The Honourable Leslie Trevor Olsson.

†The Honourable Maurice Francis O'Loughlin.

ATTORNEY-GENERAL

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

*Retired, 1st September, 1984.

†Appointed, 30th August, 1984.

MEMORANDUM

A special sitting of the Full Court was held on Monday, 27th August, 1984, on the occasion of the retirement of the Honourable Mr. Justice Walters.

THE HONOURABLE THE CHIEF JUSTICE: This special sitting of the Court has been convened to mark the retirement of Mr. Justice Walters.

Mr. Justice Walters received his legal education at the University of Adelaide where he attained his degree of Bachelor of Laws. He was admitted as a practitioner of this Court on 19th December, 1936 after serving his articles of clerkship in the office of the late Mr. J. W. Nelligan Q.C. His principal was Mr. Philip Angas Parsons.

His Honour's legal career was interrupted by a period of war service with the A.I.F. when he served with the rank of Captain in the Australian Army Medical Corps. After the war he joined the Army Legal Corps and became honorary Colonel. In latter years his Honour has been a member of the Courts Martial Appeals Tribunal.

After the war he became a partner in the firm of Nelligan, Mitchell and Walters in 1946.

Mr. Justice Walters' judicial career has followed a unique path. It has taken him as close to being what is called in some parts of the word "a career judge" as is possible in our system. After a promising career as a barrister and solicitor, he joined the judiciary on the bottom rung, so to speak, at its lowest level in 1950 at the age of thirty-five years, when he was appointed magistrate. There was at that time, of course, no intermediate judiciary and the magistracy was the only level of the judiciary below the Supreme Court.

His Honour served with distinction as a magistrate for seven years. His Court was a byword in the legal profession for the high and efficient standard of justice administered in it. A number of the Judges sitting on this bench today, including myself, had the privilege of appearing before his Honour in those years.

His Honour's standing and reputation as a magistrate led to promotion. In 1954 he was appointed Deputy Master of the Supreme Court, at first in an acting and later in a permanent capacity. On the retirement of Master Kirkman in 1961, he was appointed Master of the Court. At that time, the Master, in addition to his judicial functions, was the permanent head of the Supreme Court Department and the principal administrator of the Court. His Honour proved himself to be a most capable administrator. In addition, he made himself a master of the Rules of Court and he lectured in the Law of Procedure at the Adelaide Law School for some years. Throughout his later period as a judge, his colleagues on the

bench acknowledged that mastery by turning to him constantly for help and guidance in matters of procedure. His work in the performance of the judicial duties of Master was of such a high standard that his appointment as a Judge of the Court in 1966 was received with universal acclaim. His Honour's appointment was the culmination of a judicial career during the course of which he graduated by stages from the lowest rung of the State judiciary to the highest.

Mr. Justice Walters has served for nineteen years as a Judge of this Court. He has been a great source of strength to the Court in a number of ways. I have already mentioned that he is an acknowledged master of the rules and procedures of the Court. His wide knowledge of the law and thorough approach to his cases have combined to make him a judge of high quality. His judgments are always carefully reasoned and clearly expressed. His summings up to juries in criminal trials deserve special mention for, in my view, they have been notable for the clarity and simplicity with which issues of law and fact have been explained in a manner capable of being understood by the least sophisticated of jurors. These are all commendable qualities in a judge. But if there is one outstanding feature of Mr. Justice Walters' judicial character and labours, it is conscientiousness. The keenness of his sense of justice and of his concern for the parties to the cases before him has caused him to give each case an anxious consideration which at times, to my personal knowledge, has reached the level of personal worry.

I feel a considerable personal sense of loss in the departure of Mr. Justice Walters. I served the greater part of my articles of clerkship under his tutelage and I owe him much for the grounding which I received in the practice of the law. In later years the educative process continued as I appeared before him in his various judicial capacities. He has always been most kind and helpful to me. His support and assistance as a Judge of the Court has been of inestimable comfort to me in the discharge of my present responsibilities.

It is unfortunate that his Honour's last year on the bench has been marred by the illness which has forced his early retirement. We all trust that he will speedily recover his full health and strength and that he and his wife will enjoy many years of happy retirement together.

THE HONOURABLE THE ATTORNEY-GENERAL: May it please the Court: I join with your Honour the Chief Justice, other members of the bench, the legal profession and public of South Australia to pay my respects on the occasion of the retirement of your Honour Mr. Justice Walters. On behalf of the South Australian Government, I acknowledge your Honour's long and distinguished career of service to the law, the armed services and the people of South Australia.

Your Honour the Chief Justice has already outlined Mr. Justice Walters' career in the law and I do not intend to repeat those details. It is, however, noteworthy, as your Honour the Chief Justice has said, that Mr. Justice Walters came to the bench of this Court after sixteen years as a magistrate in the Country and Suburban Courts Department, then Deputy

Master and Master of this Court, rather than directly from the bar. You shared this experience with two other Supreme Court Judges with whom you worked as Master in this Court and I refer to Mr. Justice Forster of the Northern Territory Supreme Court and Mr. Justice Olsson. Although the notion of a career in the judiciary is more accepted in continental Europe than in the United Kingdom and Australia, your Honour's experience indicates that it is quite compatible with the British legal tradition. As a Member of Parliament, I can also note that your Honour had more than usual contact for a judge with South Australian political processes. I refer to the occasion at the beginning of your career on this bench when, as the junior puisne Judge, you chaired the Court of Disputed Returns into the election in the seat of Millicent in 1968. The legislation at that time required a Court of Disputed Returns to be constituted by the junior puisne Judge and four members of Parliament, in this case two government members, Attorney-General Robin Millhouse and Mr. Brookman, and the Leader of the Opposition, Mr. Dunstan, and Mr. Loveday. I imagine that presiding over a tribunal of that composition required even your Honour's well known skills of tact and diplomacy to be exercised in full. It was a tribute to the Court, and I believe to the legal system, and the training that it provides, that all the lawyers—at least yourself as chairman, Mr. Millhouse and Mr. Dunstan—produced a unanimous judgment despite the obviously different political interests involved.

It is also interesting to note that your Honour the Chief Justice appeared for Mr. Corcoran, later Premier of the State, whose election was being challenged by the now Leader of the Opposition in the Legislative Council, Mr. Martin Cameron, for whom Mr. Justice Zelling appeared.

Your Honour Mr. Justice Walters was to be involved again in contact with South Australian representative institutions when almost at the end of your judicial career and, as the most senior puisne Judge available for appointment, you presided on the most recent redistribution for House of Assembly electoral boundaries.

For more than eighteen years now your Honour has sat as a Judge of this Court and during that time you have earned the reputation of being a friend and a mentor to many members of the legal profession.

You have always made yourself available to give advice and counsel to a vast range of people in the legal profession on matters relating to the conduct of cases and their careers in the law.

Your grasp of the Supreme Court rules of procedure is unparalleled and you have gone to great lengths to share that knowledge with your fellow judges and the legal profession generally. There have been many more junior members of the profession who have benefited greatly from your knowledge and your willingness to adopt the role of mentor to your colleagues.

This commitment to the education of those following your footsteps is exemplified by your work at the University of Adelaide, where you lectured in Procedure at the Law School from 1961 to 1966, I was fortunate to be a

beneficiary of those lectures, although I must confess that I was a little perturbed recently when your Honour confided that your cleaning up had discovered one of my old exam papers.

While the professional life of a Supreme Court judge must inevitably be one based to a considerable extent on formality, you have never allowed this to stand in the way of your humanity. Your reputation in this regard is widely known throughout the profession. You were never slow to spot the humour in a situation or to exhibit a warmth to those who appear before you, no matter how difficult the circumstances. You have been described to me as "a master of the enigmatic smile". I am sure that those practitioners and colleagues here today are most familiar with what has almost become your trademark.

Outside the law you have developed other interests. The Army has been mentioned and you have also served as a President of the Commonwealth Club of Australia and of the Friends of Penang Association.

Your Honour's service to this Bench and the South Australian community will be long remembered.

In conclusion, on this the occasion of your retirement, allow me to express my personal best wishes and those of the Government to you and your wife.

MR. J. W. PERRY Q.C.: May it please the Court: In speaking on behalf of the Law Society of South Australia, I endorse the remarks made by your Honour the Chief Justice and the Honourable the Attorney-General and the good wishes which have been expressed on the occasion of the retirement of your Honour Mr. Justice Walters.

As has been pointed out, after your Honour's admission to practice in 1936 you took up a position with the firm of Nelligan & Angas Parsons, a firm which you rejoined after your Honour's service in the war. It is not inappropriate to observe that all of the members of that firm have left a significant mark upon the practice of the law in this State. One of them was the late Mr. Joe Nelligan, Q.C. I understand that your Honour has been heard to tell against yourself the story of your appearance with him in a murder case of some complexity. You gave of your services under the Legal Assistance Scheme of the Law Society upon which there was a very meagre dividend of the order of one or two shillings in the pound for your services. I understand that after payment of the psychiatrist, who was the leading witness for the defence, the balance of the fee left just enough for both of you to take lunch at the Naval and Military Club.

It was from that firm and as a well and truly broadly experienced practitioner that your Honour assumed your first post on the Bench as a Special Magistrate. I am assured by those who appeared before your Honour during the time you held that position that you quickly demonstrated the qualities which were to be apparent later when you took up a position in this Court. In particular as a Magistrate you were remembered for your unfailing courtesy and the dignity which marked your court, together with a thorough grasp of the legal and factual issues.

It was in your Honour's next post as a Deputy Master and Master of the Supreme Court that I had the pleasure of first appearing before you. Perhaps I can be permitted to mention how struck I was with your Honour's treatment of me upon the occasion of my first appearance before you in chambers, which occurred while I was an articulated clerk. Through some exigency of the moment there was no principal available to take the matter and I appeared strictly with no right of audience before your Honour. You turned a blind eye to my patent lack of status, heard out the merits of the case, and treated me with the courtesy which might have been accorded a senior practitioner, I was never to forget that occasion and over many appearances before you since then your Honour has invariably displayed the same qualities.

From your progression from Master to Judge, your Honour took with you a particular expertise, which has already been noted, in the procedures of the Court, an expertise which found expression in the scrupulously careful and clear manner in which your Honour has always dealt with the way in which cases have been pleaded and the terms of directions and orders. Over the years this has been an example to younger practitioners, some of whom enjoyed the added benefit of the lectures delivered by you in the Law of Procedure at Adelaide University.

In addition to the qualities which I have mentioned, I should add one observation which has struck many of us who have had the pleasure of presenting cases before your Honour. It has been the common experience of those at the Bar that your Honour has the ability, not always apparent in judges, so to conduct your trials that not only the victor but also the losing party leaves the court with the feeling that he has had a fair hearing. It is not without a sense of loss that the profession now sees your Honour leave the Bench.

The Law Society, speaking on behalf of the practising profession, wishes you and your wife well in your retirement.

THE HONOURABLE MR. JUSTICE WALTERS: Chief Justice, Mr. Attorney and Mr. Perry: I thank you, Chief Justice, for the kind words that you have spoken about me and for the good wishes that you have offered to my wife and me. I shall keep them well in my memory in my retirement. Mr. Attorney and Mr. Perry, I thank you also for your good wishes and for all the generous things that you have said about me. I can only say that while I deeply appreciate the compliments that have been paid to me this morning, my failings and shortcomings have been entirely overlooked. I know that I do not possess the qualities that all good judges are supposed to possess. I have done my best to acquire them but with little success. Perhaps I have been able to acquire, to some degree, the virtue of patience.

However, I have enjoyed my judicial life, although there can be no doubt that the work of a judge is exacting and demanding. It is only by intensive work that a judge can keep abreast of his responsibilities. I must say that the burden of my judicial work has been lightened by the

courtesy, friendship and kindness of my colleagues over almost nineteen years. I speak of my recent and present colleagues and of those with whom I was associated when I first came to the Bench. It has always been an association of friendship and brotherhood. During my illness earlier this year I was touched by the concern that my present and former colleagues had for my welfare.

I have been extremely fortunate in being a member of the Court while it has been led by three Chief Justices. First, Sir Mellis Napier, who possessed a great judicial mind, with an immense sweep and accuracy of memory of case law and legal authority. In so many ways he was especially kind to me. I was privileged to get to know Sir Mellis very well. Deep down, he aspired to follow the admonition of the prophet Micah, namely, "To do justly, and to love mercy, and to walk humbly". I recall his counsel to me when I was appointed to the Court. His injunction was: "Keep your judgments short; find the facts and, if needs be, we will put you right on the law".

I have always had Sir Mellis's words in mind when I have set about preparing a judgment. In passing, I may say from my experience over the years I have found that Lord Justice Slesser was guilty of no exaggeration when he said, "There is no work more critical or exacting than the ascertainment of relevant facts in courts of first instance".

Next I must speak of Chief Justice Bray, whose work will stand as a monument to the honour of this Court. So often I have been told by my judicial friends, on the occasions of my visits to the eastern States, that I have been fortunate to be a member of the "Bray Court", and in this I have wholeheartedly agreed. Now we have a very able successor to Chief Justices Napier and Bray in Chief Justice King. If I may say so, with all respect to him, he has a powerful judicial mind, blended with swift legal apprehension and a great constructive and administrative ability. I speak of these accomplishments of the Chief Justice although he had the misfortune to be articulated to me for some eighteen months. To him it was perhaps an act of God that I was appointed to the magistracy and that his articles of clerkship were assigned to Miss R. F. Mitchell, as she then was.

Next, I must say that I am delighted to be honoured by the presence here today of my former colleagues, Sir Roderic Chamberlain (who was extremely kind and helpful to me when I first came to the Court), Mr. Hogarth (a long-standing friend), Mr. Wells and Mr. Williams, my colleague from the days of our magistracy. You will know from what my brother Wells said on the occasion of his retirement three months ago, how close we were together on the bench and how, with the aid of the squeaky floorboards separating our chambers, we were able to achieve co-operative effort. Unfortunately, it is because of her absence from the State, that my former colleague Dame Roma Mitchell, with whom I practised in partnership together with the late Mr. J. W. Nelligan Q.C. over a number of years, is unable to be present. I pause to say that Mr. Nelligan was my mentor and that I owe so much to him. Dame Roma has

conveyed her good wishes, as also has my brother Sangster in a letter from overseas that I received from him a few days ago. And, of course, I remember this morning my esteemed colleague, the late Sir Charles Bright, of happy memory.

I am also delighted by the presence of Mr. Justice Fisher of the Federal Court, Mr. Justice McGovern and Justice Bulbeck of the Family Court.

Unfortunately, four of my colleagues, my brothers Legoe, Cox, Matheson and Johnston, are unable to be present today. Well before I had come to the decision that I should retire now, they had already arranged to have their vacations at this time, but I take with me their good wishes.

I thank Senior Judge Ligertwood of the District Court and Mr. Justice Stanley of the Industrial Court and the Judges of those Courts for coming here this morning. They have done me a singular honour by their presence and I appreciate it very much.

Among those here this morning, I am delighted to see good friends from the days of my magistracy. They were happy days, although we worked hard. They were the days when those who later became my judicial brethren—Messrs. Hogarth, Zelling, King, Jacobs, Cox, Bollen, Ligertwood: there are others whom I forget for the moment (I know that his Honour Judge Moran used to tackle me in those days)—were attempting to enlighten me in the various fields of law. But the magistracy plays an important part in the administration of justice in this State and I am glad that I retain my commission as a Special Magistrate. The Right Honourable Lord Roskill, a Lord of Appeal in Ordinary since 1980 and a Lord Justice of Appeal since 1971, came to Melbourne a few months ago as the principal guest of the National Conference of the Australian Institute of Arbitrators. In the course of his being interviewed in Melbourne, his Lordship said that he had been a magistrate for over thirty years and that he still regarded it as one of his most important duties. Two or three times a year, his Lordship goes down to Hampshire to sit in the Brampton Magistrates' Court. He went on to say: "I'm not sure what the local solicitors think, but I reckon it brings me down to earth". Lord Roskill's remarks clearly give point to his view of the importance of the magistracy.

Next, I must make mention of my staff and associates over the years. I have had nothing but loyalty and excellent service from my three tipstaves, Messrs. Davis, Brown and Hodgson, and from my secretaries, especially my present secretary Mrs. Newcombe who has been a great help to me for some eight years. I want to express my gratitude to them all.

I have had seventeen associates, with all of whom I have enjoyed a happy relationship. My first associate was Mr. Geoffrey Hackett-Jones, now the Parliamentary Counsel for South Australia; my last associate is Mr. David Warden, the grandson of Sir Roderic Chamberlain. They have all been of great assistance to me. I have watched and I will watch their individual careers with interest and a feeling of satisfaction. I am delighted to see fourteen of them here this morning; the other three are beyond the jurisdiction.

To the Masters of the Court, the Registrar and his Deputy, the Registrar of Probates, the Sheriff, the Court staff, reporters and librarians, I am grateful for the assistance that I have received from them over the years. The value of a judge's service would be very much lessened without their help.

Next, I come to a personal matter. Behind me has stood my wife, who has provided me with all the support and care and comfort that I have needed, indeed more, over a long period of years. I must publicly acknowledge my great debt to my wife and to my two daughters as well for the burdens that she and they have had to bear and for the immense help they have given me in more ways than one.

I could go on expressing my feelings of gratitude—my gratitude to the members of the profession and to my good friends who have come here this morning to honour me. I am especially grateful to the profession for their assistance, co-operation and consideration over the years.

In the last few days I have been asking myself what I could say on this occasion that has not been said in the past. I must confess that I have not thought of anything really new. But I am not proposing to weary you with a string of reminiscences or with a tedious homily. There are many reminiscences that come to mind. However, I forbear to tell them, as much as I would like to do so. Although I have kept you long enough, I will trespass on your patience by adding a few further observations.

A society is only as good as its law, as good as the opportunity for everyone to seek the protection and redress of the law and to have access to its courts; as good as judges and lawyers working together in the interests of justice can make it. No doubt we are faced with the problem that an increasing number of people do not have ready and affordable access to the law. To them the cost of litigation presents serious problems and financial hardship. It may be that the introduction of a pre-paid legal insurance scheme of the kind that has been established in the United States, and along the lines of private health insurance, could provide a solution to these problems. Recently I read that in the United States more than six million people are covered by pre-paid legal insurance schemes. Or, perhaps, the availability of legal aid will have to be widened substantially in order to overcome the problems that I have mentioned.

I pass to my final topic. Having served in the Courts of this State for thirty-four years, I retire with the knowledge and satisfaction that in South Australia there is a confidence in the administration of justice, for the very good reason that the probity of all judges and magistrates is beyond question. From my knowledge of them, the judges and magistrates in this State have an unsullied reputation within the community. May this always be so. I recognise that it is impossible to satisfy all parties in a civil cause or all those who are concerned with the administration of criminal justice. Naturally, our judgments and pronouncements are criticised and often they become the subject of public controversy. But that should not deter a judge, whether his judgments or pronouncements are liked or disliked, from doing justice according to the oath that he

MEMORANDUM

xiii

takes on the day that he assumes office, the oath to do right to all manner of people, after the laws and usages of this State, without fear or favour, affection or ill-will.

In all humility I think I can say that in my conscience I have been true to the oath that I took. I only hope that over the years of my judicial career I have fulfilled my responsibilities to the State.

Thank you all very much. I say farewell to you all.