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THE JUDGES
OF THE
SUPREME COURT OF TASMANIA
DURING THE PERIOD COMPRISED IN THIS VOLUME

The Hon GUY STEPHEN MONTAGU GREEN, KBE,
Chief Justice

The Hon WILLIAM JOHN ELLIS COX, RFD, ED
Chief Justice

The Hon PETER GEORGE UNDERWOOD

The Hon CHRISTOPHER REGINALD WRIGHT

The Hon EWAN CHARLES CRAWFORD

The Hon WILLIAM PETER MARIA ZEEMAN

The Hon PIERRE WILLIAM SLICER

ATTORNEY-GENERAL

The Hon RONALD CORNISH MHA

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MEMORANDA

On 2 September 1995, the Honourable SIR GUY STEPHEN MONTAGUE GREEN KBE AC, Chief Justice of Tasmania resigned his office to become Governor of Tasmania.

On 1 September 1995 at a special sitting of the Full Court, he said:

I have to announce that I have submitted to his Excellency the Governor, my resignation as the Chief Justice of Tasmania and that his Excellency has been pleased to accept my resignation with effect from tomorrow.

COX J said:

The presence here to-day of so many different representatives of the legal profession, of Government (both State and Federal) and of higher learning attests the high degree of esteem in which the Chief Justice of this Court is held as we assemble to do him honour on his retirement from the Court and to wish him well as he assumes the responsibilities of his new and important office.

On behalf of the Court, I welcome in particular the representatives of those other Courts which exercise their jurisdiction within the geographical limits of this State. We are honoured by the presence of Sir Darryl Dawson, a Justice of the High Court of Australia which regularly, if less frequently than we would like, sits in these courts; of Mr Justice Black, the Chief Justice of the Federal Court of Australia; of Justices Butler and Hannon of the Family Court of Australia; and of the two retired judges who have joined us to-day – our own former colleague the Honourable Henry Cosgrove and the Honourable Rodney Wood, a former senior judge of the Family Court stationed here in Hobart. I also welcome the Honourable the Attorney-General Mr Cornish, the Federal Minister for Justice The Honourable Duncan Kerr, Mr Solicitor, the Magistrates, the Vice-Chancellor of the University and representatives of the Faculty of Law. You are all most welcome. The Honourable the Premier and the Lord Mayor are unable to be present with us but both send their apologies and good wishes.

This is a day of mixed feelings. On the one hand we are saddened to be losing a colleague of such high stature who has given the Court his leadership for nearly 22 years. On the other hand we rejoice at the honour conferred upon him of being appointed by Her Majesty to be her representative in this State as our Governor. That honour has been conferred once before on a Chief Justice of this Court, the late Sir Stanley Burbury of happy memory, who fulfilled his role as Governor with great distinction and we are confident that our present Chief

Justice will, like Sir Stanley, carry it out to the universal satisfaction and pride of the Tasmanian community.

I had the good fortune on 30 October 1973 to be the President of the Bar Association and hence one of those who welcomed Sir Guy as he took his seat on the Bench and presented his commission. I thought then that a man of 36 stood every chance of breaking the record of 30 years in office set by the first Chief Justice, Sir John Pedder; but here I am a bare 22 years later called upon to farewell him. I assured him then of the loyalty and goodwill he could rely on from the Bar and I know that my words were not in vain. He has had that loyalty and co-operation from the Bar, from the profession at large, from the members of the Law School – indeed, from all people and agencies concerned with the administration of justice in respect of which his office, as the senior member of the judicial arm of government, imposes such a special responsibility.

This loyalty and co-operation he has fully earned. He has led by example. He has accepted a full judicial workload, contributing to the day to day functioning of the Court with his work at first instance, both here and on each of the circuits the Court throughout the year conducts; and of course as President of each Court of Appeal upon which he sits. In addition, he has undertaken the administrative workload associated with the proper functioning of the Court, has been our spokesman on matters of law reform whenever the Court has had the occasion to present its views to Government on matters of that nature; has chaired the deliberations of the Rule Committee in its search for improvement of the procedural means employed to advance the expeditious and fair dispatch of the Court's business; and has been a source of inspiration through his willingness to speak formally and informally to them and to participate in their activities to a generation of lawyers from their student days at University, at the Legal Practice Course, at continuing education seminars and at conventions of the Law Society and Bar Association. His judgments, if I may say so, are widely admired as principled, reasoned and objective, and though he leaves us now, that rich legacy will endure. On top of all this he has given public service of the highest order and as other speakers will mention his achievements in that regard, I will not dwell on them.

I know I speak for all of his judicial brethren when I say how much we admire the example he has given. The nature of the judicial function is such that each incumbent, in the task of decision-making, encounters what Chief Justice Brennan recently described as "the lonely room of conscience" and there is no escape from that. But in all other aspects of our work we have appreciated his sympathetic ear, his wise counsel, his readiness to accommodate our idiosyncrasies and,

above all, his friendship. This has led to a most harmonious collegial atmosphere in Chambers. We will greatly miss him but take comfort in the knowledge that his talents will be made available to the entire Tasmanian community.

We wish him and Lady Green every success and satisfaction in that important endeavour.

The Hon R CORNISH, Attorney-General, said:

Sir it is with a sense of some irony that I address you today. As the person responsible for the legislation abolishing the use of unsworn statements, I now find myself in the unenviable position of making one.

It is now approaching 22 years since your appointment as Chief Justice of Tasmania. That is a long period of time in service to the law, and to the Tasmanian community. It is a measure of your standing that since 1981, you have been the longest serving Chief Justice in Australia. You are also one of the longest serving Judges in Australia.

But still, all things must pass. On this, your final sitting day in the Supreme Court, I would like to pay tribute to your contribution to the law, the judiciary and the Tasmanian and Australian community.

Your achievements in legal practice, as a Magistrate and as Chief Justice, Your Honour, have been considerable. You leave the Supreme Court as a strong and respected institution which is fundamental to our way of life. You leave it also in the capable hands of your fellow former student in the Tasmanian Law Faculty, Mr Justice Cox. I note also that Mr Justice Underwood and Mr Justice Wright were your fellow students, representing an illustrious period indeed for the Law Faculty.

I am aware that, since your role as the inaugural President of the Tasmanian University Law Society, the University of Tasmania has been the beneficiary of your strong affection and involvement. As Chancellor of the University since 1985, you presided over the negotiations which resulted in the amalgamation with the Tasmanian State Institute of Technology. It must be rare indeed that the person largely responsible for drafting legislation — in this case the *University of Tasmania Act 1992* — was also the person who gave the Royal Assent to it, following its passage through the Parliament. It is a precedent which I will refrain from drawing to the attention of the Chief Parliamentary Counsel, lest he get ideas above his station.

I am aware also of the strong role which you have taken with the Australian Conference of Supreme Court and Federal Court Judges, with the Australian Institute of Judicial Administration, and with the

Council of Law Reporting. All these reflect your strong commitment to the principle of judicial independence, and the related questions of the responsibility of Courts for their own administration and their relationship with the Executive Government.

In 1982, you were appointed as Lieutenant-Governor of the State, and I am advised that you have administered the Government of the State for a total period of almost two years since that time. That certainly represents a significant period of on-the-job training for your future role.

Sir, I am also aware that you have been very active in community affairs. I instance your involvement as Chairman of the Tasmanian Committee of the Duke of Edinburgh's Award Scheme and your National and Tasmanian contribution to the Winston Churchill Memorial Trust.

You have also made a significant contribution to St John Ambulance Australia. As the current Chancellor of the Order in Australia, you are its effective head.

You have also demonstrated a special interest in and support for organisations concerned with mental health, and I refer particularly to your patronage and support of the Richmond Fellowship and the GROW organisation, both of which are concerned with the rehabilitation of those who have suffered mental illness.

Your talents and service have been recognised by the honours bestowed upon you, as a Knight Commander of the Order of the British Empire, and as a Companion in the Order of Australia. These honours represent a very tangible measure of the regard in which your contribution is held.

Your Honour, I thank you for the contribution which you have made to the Supreme Court, to the legal system in Tasmania, and the Tasmanian community. I know that your qualities of humility, tolerance and fairness, and your interest in the Tasmanian community will stand you in very good stead in your new appointment as Governor of Tasmania.

As Attorney-General, and on behalf of the Tasmanian Government and the Tasmanian community, I thank you; and I wish you well.

C P WEBSTER (President of the Law Society of Tasmania) said:

May it please the Court, and especially your Honour, the Chief Justice. I have the honour and the pleasure to address you on behalf of the Law Society of Tasmania, which represents all the legal practitioners practising in the State. Many of those practitioners are present in court today.

Your Honour's rise to the position of Chief Justice was meteoric. You were admitted as a practitioner of the Supreme Court in 1960; became a partner in the Launceston firm of Ritchie & Parker Alfred Green & Company in 1963; appointed a Magistrate in June 1971; and appointed to the Bench of the Supreme Court of Tasmania as Chief Justice on 30 October 1973. Your Honour's period as Chief Justice of this Honourable Court is therefore just twenty-nine days short of 22 years.

During your period as Chief Justice you have devoted considerable time to additional public service as Chancellor of the University and as Administrator of the State, the latter position being an apprenticeship for the position which you are soon to take as Governor of the State of Tasmania.

The Attorney for the State of Tasmania, speaking at the Ceremonial Sitting to mark your appointment as Chief Justice in October 1973, spoke of your humility and sense of complete justice, coupled with compassion.

Your Honour has maintained those attributes of humility, compassion and a sense of justice throughout your 22 years on the bench and has always displayed courtesy and respect to all participants, both members of the legal profession and the public, in proceedings before you.

Your Honour has always been a friend to the legal profession and has sought the views of the Law Society where appropriate.

As Chief Justice, your Honour has also been responsible for a number of changes to the procedures of this Court which have simplified the judicial process and resulted in increased access to justice.

Your Honour does not leave this Court to retire, but to undertake equally onerous duties as Governor of this State. On behalf of the Legal Profession of Tasmania I thank you for the long service to the profession and I wish your Honour well in your new duties.

C J BARTLETT (President of the Tasmanian Bar Association) said:

Chief Justice, your Honours, Master and distinguished guests, I rise to speak to this Honourable Court on behalf of the Bar Association, and thus on behalf of those of the profession who appear regularly in this Court. In the day to day running of your Honour's Court you have always maintained patience and courtesy towards members of the Bar. You have provided assistance and instruction. In return you have earned the deserved respect and loyalty of all those who have appeared before you.

In your time on the Court you have attempted to ensure that the status of the Supreme Court and the judicial system and its important position in society has not been unduly eroded. You have strongly defended judicial independence and sought to maintain the integrity of the judicial system.

In the last 22 years whilst holding high office you have not lost touch with the community and have maintained involvement in community organisations as well as the University of Tasmania.

Whilst, Chief Justice, you have always mixed freely with the Bar. You have attended and participated in lectures, seminars and the annual Bar Association convention. You have willingly offered counsel and guidance to the Bar and for those contributions we are most grateful.

Your Honour will no doubt leave the Bench with mixed feelings to take up your impending appointment as Governor of this State. As your Honour has presided over much change in the law so to as we move towards the year 2000, there may be much change and challenge in store for you in the position of Governor. However, your obvious love and knowledge of Tasmania and its history make you a most suitable appointment. In addition, you are the first Tasmanian-born Governor appointed.

You will no doubt cope with the tasks ahead with your usual diplomacy and aplomb and your vast legal experience and understanding of the constitutional issues will enable you to continue to serve this State well.

There is no need for judgment to be reserved.

On this day when you are farewelled as Chief Justice of this Honourable Court may I say with great sincerity, on behalf of the Bar Association and its members, we thank you for your contribution to the law and we wish you and Lady Green all the best for the future.

May it please the Court.

GREEN CJ said:

Mr Justice Cox, Mr Attorney, Mr Webster and Mr Bartlett. Thank you very much indeed for all that you have said.

The fact that Mr Justice Cox is amongst those who have spoken today takes on special significance for me as he also spoke in his capacity as President of the Tasmanian Bar Association at the sitting in 1973 when I assumed office as Chief Justice.

I would like to thank everyone in this Court room for attending this sitting today. Mr. Justice Cox has already welcomed our official guests and I won't mention them again save to say how much I appreciate that

amongst those who are present on this Bench with me are Sir Daryl Dawson and Chief Justice Michael Black. It is a great personal pleasure for me to have these judicial colleagues and friends on the Bench and I also appreciate the honour they have done to this Court by coming here today.

It is now almost exactly 22 years since that day in 1973 when, with considerable trepidation, I took my seat as the Chief Justice of Tasmania in the old No. 1 Court in Macquarie Street.

During the period since then we have seen many changes in the Court. It has grown from a court of five Judges to seven, a modest growth rate indeed compared with that of other organisations and institutions during that time. We have moved from the premises in Franklin Square where, although the Judges' chambers had a certain Victorian grandeur about them, the facilities otherwise were inadequate. The move we made from the Criminal Courts in Campbell Street to our present courts was even more welcome. At Campbell Street everyone including the Judges had to work under conditions which could only be described as Dickensian. I must say that even the possibility that the primitive conditions under which we had to work might one day result in the building being classified as one of the treasures of the National Trust did not at the time afford much comfort to those who had to endure them.

The facilities in these buildings are vastly superior but we are now moving into yet another stage and taking a good look at how we can improve the way we look after people who are involved in the processes of the Court including especially jurors and witnesses.

But as well as changes to its physical environment the way in which the Court operates has also changed over the last twenty years. Its procedures, internal organisation and Registry have undergone many reforms. But change and reform are not ends in themselves and developments of that kind are only significant if they result in improvements in the way in which the Court performs its function and delivers its services. As to that I would like to say two things. First, contrary to popular mythology in the Supreme Court of Tasmania today there are no significant Court generated delays in the hearing of civil or criminal trials or appeals. There may sometimes be delays in the processes leading to cases reaching the Court but once they get to the Court they can be set down for hearing virtually as soon as the parties are ready. Secondly, I think that it is right to record the view endorsed by observers from outside this State that Tasmanian litigants are well served by the Supreme Court of Tasmania and that notwithstanding that it is one of the smaller courts in the country the quality of its work is at the very least comparable with that of any other

Court in Australia save of course for the High Court of Australia with which I would not have the temerity to compare even the Supreme Court of Tasmania.

Over the last twenty years we have also witnessed significant improvements in the law and the legal system generally. The profession has changed considerably. It is larger, more diverse and better organised. The Law Council of Australia has changed from being merely a co-ordinating committee into an integrated national professional body of real significance. Our own Law Society is organised on much more business like lines and the profession, through the Law Society and the Bar Association, is playing a more active role in legal education, law reform and public debate about legal issues than has ever been the case before.

In the past one of the most troubling aspects of the administration of justice has been the inadequacy of legal aid for those unable to pay for their own legal representation. In the 1960's although the legal aid scheme in Tasmania was one of the best in Australia it was woefully under resourced and only worked at all because the profession was prepared to run it on a voluntary basis and practitioners were prepared to accept legal aid briefs for what was often little more than a nominal fee. Today the scheme in Tasmania is well funded and well administered by full time staff so that virtually no one is unrepresented in a criminal trial except by choice and legal aid is available for a range of other cases which would have been unthinkable in years gone by. Of course much still needs to be done particularly in relation to the very difficult problem of the cost of litigation for middle income earners but nevertheless we should acknowledge the tremendous advances which have been achieved so far.

Another significant development has been a re-examination by the judiciary throughout Australia of the question of just what is the scope of the responsibilities of a Judge. It used to be thought that the only duty of a Judge was to determine cases in accordance with the law and the judicial oath. That remains the core function of the judiciary but the question is now being raised of whether in addition Judges also have a distinct set of constitutional responsibilities which are concomitant with their status as members of the judicial organ of the State.

Judges undoubtedly have a duty to uphold the fundamental principles of our constitutional arrangements and of the philosophy of the rule of law. But the issue is whether they are only competent to uphold and defend those principles by the way in which they decide particular cases or whether they are also entitled or even obliged to do so by extra curial means such as by making public statements, engaging in public debate about legal and constitutional issues or even by mounting

campaigns to influence decisions by Governments or Parliaments. Twenty or thirty years ago a majority of the Judges in Australia would undoubtedly have thought that the judiciary had no such role but I suspect that today a majority would take the opposite view. Certainly there have been changes in the way in which the judiciary organises itself which reflect significant developments in the perception by Judges of the scope of their functions. When I was appointed as Chief Justice the judiciary in Australia comprised a group of individuals who rarely met and whose main channel of communication was through the pages of the law reports on those occasions when they respectfully expressed their agreement with or even more respectfully expressed their disagreement with each other's judgments. But since then Australian Judges have started meeting more and more often at conferences and in other forums and recently the Chief Justices and the Judges of Australia took the very significant step of forming themselves into permanent associations. I would predict that the creation of those organisations will turn out in the future to have been a very important initiative. Not only will they provide a structured means for the exchange of ideas and information between Judges and Courts but of even more importance they will be the vehicle through which the judiciary can make a much needed contribution to debate about important constitutional and legal issues.

This is not an occasion when I want to dwell upon negative aspects of the law or the legal system. But we must not be complacent and it is necessary to record that along with positive and encouraging developments of the kind to which I have referred so far, in recent years we have also witnessed the emergence of some less welcome trends. I refer to two in particular.

The first arises out of the increased scrutiny to which the legal profession and the Courts have been subject by the media and governmental and parliamentary enquiries in recent years. The fact that the law and its institutions are being closely examined is not objectionable in itself, rather it should be welcomed. But what is disquieting is that such examinations often proceed on an erroneous or at least incomplete understanding of the principles and operation of the legal system and an uncritical acceptance of popular stereotypes of Judges and lawyers which can only be described as caricatures. An example is provided by what the editor of the Australian Law Journal refers to as the myth of the gavel – that symbol of the Courts so beloved of those who write about the law but which in fact has never been used in any court in Australia. Of course that particular example is of trivial significance but it is symptomatic of a level of ignorance

about more important aspects of the legal system which is capable of seriously distorting public debate about legal issues.

The other disquieting development particularly in some of the mainland states is an increased tendency to divert the judicial function away from the ordinary courts and invest it in bodies which are unconstrained by rules of evidence or procedure which comprise members who are not legally trained, in which lawyers have no, or only a limited, right of audience and which are not seen to be independent because they can readily be abolished or because their members do not have security of tenure. This retreat from the established institutions of the law is in fact a retreat from the law itself because history shows that an essential condition of the maintenance of the rule of law and a judicial system which is rational and just and in which like cases are treated alike is that the law is administered by independent, permanently established courts which are manned and assisted by skilled professionals and which decide cases in accordance with principles and processes which are known in advance and consistently applied.

Throughout my term of office I have been sustained by the firmly held conviction that the most significant characteristic of our society which distinguishes it from the majority of the countries of the world and which justifies our claim to be a civilised society is that we have a legal and constitutional system which gives concrete expression to the philosophy of the rule of law and in a real and practical way operates so as effectively to vindicate the rights and protect the liberties of each individual member of our society. I regard it as a very great privilege to have been a part of and to have served in some small way that great heritage of which we are the fortunate beneficiaries.

It will be a great wrench for me to leave this Court although I should hasten to say that I do not regard myself as leaving the law altogether. I think that the people of Tasmania would justifiably feel a certain disquiet if they thought that they had a Governor who regarded himself as being outside the law.

But the personal reservations I feel about leaving the Court have in large measure been overcome by the knowledge that I am leaving it in the excellent hands of my brother Judges and their new Chief Justice Mr. Justice Cox who I know will be assuming that office with the fully justified confidence and support of all the Judges, the profession and the people of Tasmania.

There are many people to whom I feel a great debt of gratitude and who I would like to acknowledge today. I cannot refer to them all but I would like to mention in particular the Law School of the University of

Tasmania for giving me a grounding in the law which I do not think could have been bettered anywhere else, my colleagues at the Bar for the privilege of working with them both when I was in practice and since I have been on the Bench. I would like to thank you Mr Attorney for your courtesy and helpfulness in your dealings with me and the Court, the Registrars of this Court, particularly the present Registrar Mr. Ritchard, and their staff for all their help and for the critically important contribution they have made to the running of the Court, the staff in Judges' Chambers including especially my own personal staff for their loyalty and dedication and especially I express my thanks and gratitude to all the past and present Judges and Masters of this Court for their support, their friendship and for the very great privilege of working with them and learning from them.

Finally I thank my children for keeping my feet firmly on the ground and curbing any incipient tendencies to pomposity and my wife Rosslyn for her support, her wise counsel and her forbearance in the face of all the pressures that being married to someone in public office entails.

Thank you all again for coming to this Court today. Now it only remains for me to say goodbye and to say for the last time that this Court now stands adjourned.

On 4 September 1995 the Hon WILLIAM JOHN ELLIS COX, RFD ED, was appointed Chief Justice of the Supreme Court of Tasmania.