2007 - 2009

THE TASMANIAN REPORTS

THE AUTHORISED REPORTS OF DECISIONS OF
THE SUPREME COURT OF TASMANIA

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VOLUME 17

PUBLISHED FOR THE
COUNCIL OF LAW REPORTING
OF TASMANIA BY

LAWBOOK CO

REPORTERS

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JOHN McDONALD

Published by

Lawbook Co.
100 Harris Street, Pyrmont, NSW

ISSN 0085-7106

THE JUDGES

OF THE

SUPREME COURT OF TASMANIA

DURING THE PERIOD COMPRISED IN THIS VOLUME

The Hon PETER GEORGE UNDERWOOD, AO
Chief Justice

The Hon EWAN CHARLES CRAWFORD
Chief Justice

The Hon PIERRE WILLIAM SLICER

The Hon PETER ETHRINGTON EVANS

The Hon ALAN MICHAEL BLOW, OAM

The Hon SHAN EVE TENNENT

The Hon DAVID JAMES PORTER

The Hon PETER BUCHANAN
Acting Judge

The Hon PHILIP MANDIE
Acting Judge

ATTORNEYS-GENERAL

The Hon STEVEN KONS MHA

The Hon DAVID EDWARD LLEWELLYN MHA

The Hon LARA TAHIREH GIDDINGS MHA

SOLICITORS-GENERAL

WILLIAM CHRISTOPHER ROBIN BALE QC

GEOFFREY LEIGH SEALY SC

FRANCES COUNSEL NEASEY
Acting Solicitor-General

MEMORANDUM

On 23 May 2005 the Honourable MICHAEL RODNEY HILL was appointed as an Acting Judge of the Supreme Court until 23 December 2005.

On 3 August 2007 WILLIAM CHRISTOPHER ROBIN BALE, QC retired from his office as Solicitor-General and continued as Acting Solicitor-General until 14 September 2007.

On 18 September 2007 FRANCES COUNSEL NEASEY was appointed Acting Solicitor-General in place of WILLIAM CHRISTOPHER ROBIN BALE, QC, and continued in that office until 18 January 2008.

On 3 March 2008 GEOFFREY LEIGH SEALY, SC was appointed Solicitor-General in place of WILLIAM CHRISTOPHER ROBIN BALE, QC.

On 20 March 2008 the Honourable PETER GEORGE UNDERWOOD, AO, Chief Justice of Tasmania resigned his office effective from 28 March 2008 to become Governor of Tasmania.

That day, at a special sitting of the Full Court before the Full Bench CRAWFORD J said:

"We have assembled here today to farewell the Chief Justice on the occasion of his retirement, as a result of course of his resignation to take up the Office of Governor of this State. On behalf of the Court I welcome Mr John Chilcott, representing His Excellency the Governor. I also welcome Justice Robert Benjamin of the Family Court of Australia, who is based in this State, and Sir Guy Green, a former Chief Justice of the Court. We are also honoured by the presence of the Chief Magistrate, Mr Arnold Shott, by video link from Launceston, and many other Magistrates, the Lord Mayor of Hobart, Alderman Rob Valentine, the Vice Chancellor of the University, Professor Daryl Le Grew, Professor Kate Warner from the Faculty of Law, the Solicitor-General, Mr Leigh Sealy, the Director of Public Prosecutions, Mr Tim Ellis, and the Crown Solicitor, Mr Cameron Leslie. Of course it is impossible for me to name all in attendance but I welcome everyone who has honoured the Chief Justice by his or her presence today.

Chief Justice, your service to the law in this State and this Court and to the State of Tasmania has been exemplary and we thank you most sincerely. The background to that service includes that you were born in the United Kingdom, came to Tasmania as a young boy with your parents and settled in the Launceston area. You attended the Launceston High School. Your journey over the last fifty years or so from a house near Muddy Creek on the banks of the Tamar River to a more salubrious one on the Queen's Domain on the banks of the River Derwent has been a long and distinguished one.

You were a member of the distinctly unique year of 1960 graduates from the Faculty of Law at the University of Tasmania. In those days only a very small number graduated each year and yet your year produced the last three Chief Justices of this Court and by 2nd April next, three Governors of the

State. Your successful completion of the degree was noteworthy notwithstanding many distractions, including the Old Nick Company, organisation of jazz concerts and dances and the fact that in your final year, 1959, the entire academic staff of the Law Faculty walked out.

You joined Murdoch Clarke Cosgrove & Drake. It was a strong and reputable legal firm with many talented practitioners on the letterhead. I think I am right in saying that three of them became Judges of this Court. You were a leading barrister and litigious solicitor in Hobart, particularly in the civil area, and appeared as counsel in a number of major cases, including the *Tasmanian Dams* case*. Your reputation was that of a busy and talented lawyer.

You have been a Judge of the Court for over twenty three years. On 20th August 1984, you were appointed a Puisne Judge and on 2nd December 2004, Chief Justice. Throughout that time you served the interests of justice well. You have been a driving force for improvement in the quality of service and its delivery by the Court. You were instrumental in having case management introduced into the civil jurisdiction, as long ago as 1989. More recently you gained, with the cooperation of others involved in the administration and management of the criminal law, the introduction of case management in the criminal jurisdiction. It is too early to assess how successful that has been, but its aim is to achieve greater efficiency in the handling of criminal cases, the earlier disposition of them than in the past, and a significant reduction in the number of occasions upon which remandees must appear in court.

You were instrumental in the introduction and development of computer technology in the Court, which has proved highly successful and in 2000 and 2002 you chaired an Australian Institute of Judicial Administration committee which held Technology for Justice Conferences, attended by large numbers of delegates, including from overseas.

You have a particular interest and talent in the teaching of the law. You were responsible for the provision of the Supreme Court Practice and Advocacy Unit for the State's practical legal training program conducted under the auspices of the University of Tasmania and the Centre for Legal Studies. It is largely due to your efforts that the unit is the envy of other Australian practical legal training courses, involving as it does the participation of judges and senior practitioners.

You are a most effective teacher as well. You personally conducted sentencing seminars that achieved their purpose in informing members of the public about issues in sentencing. You taught advocacy in all States for the Advocacy Institute of Australia, and overseas for the United Kingdom's College of Law. Recently you were elected Chair of the National Judicial College of Australia which is responsible for overseeing the training and professional development of judicial officers in this country.

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*Editor's note: See *Commonwealth v Tasmania* (1983) 158 CLR 1.

Your other services to the law have included your time as President of the Australian Institute of Judicial Administration, Chair of the Tasmanian Council of Law Reporting, and Deputy President of the Defence Force Discipline Appeal Tribunal.

In 2001, the University of Tasmania honoured you with a degree of Doctor of Laws in recognition, in part, of your service to legal education and the administration of justice, and in 2002 you were honoured again with appointment as an officer of the Order of Australia in recognition, in part, of your service to the judiciary and to the law, particularly in the areas of law reform and for legal education and mentoring of young practitioners.

For those with legal training, the significance for our society of the rule of law and the independence of the judiciary is well understood. The two principles operate side by side. It is impossible for us to imagine a truly free and democratic society without them. Unfortunately many others, including from time to time well meaning commentators and critics of the judicial system or the outcome of individual cases, do not understand the part those principles play in achieving such a society. You have seen to it as part of your duties and functions as Chief Justice to expound their importance to the public and you have urged the legal profession to do the same, pointing out that if they do not do so the community may fail to realise what it must have.

It has been a pleasure for your fellow judges to work alongside you. Your traits include courtesy and good humour. You have led by example, accepting a full workload, never seeking to use the excuse of your administrative duties as Chief Justice to avoid your share of judicial duties on circuit and in Hobart. You have always been willing to find time to hear a case or an urgent application with good grace. You have written many leading judgments, particularly in the Full Court and the Court of Criminal Appeal and you have a reputation for expedition in the writing of your judgments. They are learned and easy to read and understand. Your management style in chambers has been a collegiate one and most effective.

As the saying goes, all good things must come to an end. We are grateful for your service and your willingness to serve others. We congratulate you upon your appointment to a higher office. We wish you and Mrs Underwood success and satisfaction as you undertake the next stage in what has already been a life of achievement."

G L Sealy SC, Solicitor-General for the State of Tasmania, said:

"May it please the Court. It is my honour and my great personal pleasure to address the Court on behalf of the Government of Tasmania. The Attorney-General, the Hon. David Llewellyn MP is unfortunately unable to attend today and has asked me to convey his apologies to the Court.

Nearly twenty four years ago, on the 20th of August 1984, your Honour, Underwood, J. took up your appointment as a Puisne Judge of this Court. Of course, I am sure that of that fact your Honour requires no reminder from me. But even if it is not necessary, it is right that the legal profession, and indeed all

Tasmanians, should be reminded that your Honour has served this State and graced the Bench of this Court for almost a quarter or a century.

For the majority of legal practitioners your Honour has always been a judge. Many of them probably believe that your Honour was born a judge. But I am old enough to recall a time when your Honour was not a judge. Indeed, my very first memory of your Honour comes from the old Court of Petty Sessions in Liverpool Street, at a time when you were still in private practice. At that time your Honour was almost certainly the pre-eminent advocate in Hobart and was rarely seen in lower Courts. It was, I think, one of the old Thursday morning lock up courts where matters were either adjourned or pleas of guilty were taken. I recall that your Honour swept majestically into the number one court wearing a quite splendid fur overcoat. It was, after all, the nineteen seventies. There was already a plea in progress; some hapless citizen had been charged with keeping a barking dog which kept the neighbours awake. He was duly dealt with. Your Honour was representing the proprietor of a local shoe shop. He had evidently fallen foul of some obscure regulation or council by-law. Being senior at the Bar Table, and having by this time removed the fur coat, your Honour rose saying to the presiding magistrate, "Your Worship, we now move from the matter of the noisy dog to the case of the hush puppy." Hush puppies indeed. But it was, after all, the nineteen seventies.

At the time of your Honour's appointment to this Court in 1984, the prevailing view was that the pace at which civil litigation was conducted was largely a matter for the parties. Quite straightforward civil actions routinely took several years to be certified ready for trial, after which the Court would allocate trial dates as much as two years after that. When cases did eventually come on for trial they were all too frequently adjourned, it having become apparent during the trial that the pleadings failed to raise the real issues in dispute or were otherwise defective. It was against this background that your Honour was among the very first judicial officers in Australia to enthusiastically embrace the then newly emerging principles of case management. It is fair to say that at least in those early days there was a widespread inertia if not resistance to those principles.

Practitioners, unaccustomed to having their pleadings exposed to critical analysis at an early stage of proceedings, attended pre-trial conferences, especially those before your Honour, with a sense of foreboding. That foreboding turned to terror if in the course of submissions your Honour were to pick up his pen and utter the fateful words, 'Just let me make a note of that'. The terror lay not in any fear that your Honour might unjustly rebuke counsel, for it is I think universally accepted that your Honour was unfailingly patient with counsel if they came to your Court properly prepared and were doing their best. No, the terror lay in the fact that one knew that one's submission was about to be deconstructed element by element, analysed and as likely as not shown to be found wanting. It was that step by step reasoning, always beginning with first principles, which was the hallmark of your Honour's judicial technique and it is that technique which forms an important part of your Honour's legacy to a generation of lawyers who were first taught advocacy by your Honour at the professional legal training program and then later came to

ply their trade in your Honour's court. Your Honour has, therefore, been uniquely placed to judge your own skills as a teacher for there must be few masters who, like you, become customers of their own apprentices.

Your Honour's interest in the teaching of advocacy has not been confined to Tasmania. As Crawford, J. mentioned, you have taught advocacy to the young and not so young lawyers throughout Australia at courses conducted by the Advocacy Institute of Australia, and internationally with the College of Law, both in the United Kingdom and in Hong Kong. But I digress. In 1989 and before the principles of case management were effectively implemented in this Court, the average period between an action being certified ready for trial and the allocated date for trial was twenty two months. In just two years, following the introduction of case management, that period was reduced to four months. In the years that have followed the introduction first of voluntary and later Court ordered mediation, both of which initiatives your Honour actively promoted, have reduced that period even further.

More recently your Honour turned his attention to the reform of criminal procedure and, as if to fire a kind of Parthian shot across the bows of the profession, the *Justices Amendment Act* 2007 commenced on the 1st of February this year. The hope and expectation is that these reforms too will significantly reduce the time that it takes to bring criminal matters to trial.

Your Honour has also been a force for change in other less obvious ways; by engaging with government to increase the accountability of the Court in relation to its use of resources your Honour has been instrumental in securing additional funding for such initiatives as the digital video and audio recording of proceedings. Although, so far as I am aware, we are yet to see appeal books containing DVDs with action replays of the highlights of proceedings at first instance, the possibility does not seem that far fetched. Indeed, upon reflection, it maybe that your Honour has chosen a most propitious time at which to leave the Court and to assume the office of Governor.

Sir, if those things which I have so far mentioned were the sum of your Honour's achievements, yours would be a worthy record indeed. But, as Crawford J has and others will make clear, the breadth of your knowledge, interest and activities outside the law, like your Honour's energy, seems almost without limit. Through your Honour's interest in and service to education and the arts, and especially the performing arts, you have maintained close connections with the Tasmanian community. There can be no doubt that those connections, coupled with your Honour's considerable intellectual abilities, understanding of our democratic institutions and, if I may say, personal charm make your Honour an ideal successor to the office of Governor. Equally, there can be no doubt that your Honour will be more than ably supported in the discharge of the duties of that high office by your wife, Frances, whose own interest in education and the arts so complements your own.

Sir, on behalf of the Government of the State of Tasmania and its people I extend to you our sincere thanks for your outstanding service as a justice and Chief Justice of this Honourable Court and for much else besides. Likewise I also extend our sincere best wishes to you and to Mrs Underwood for a happy

and fulfilling term in office. It remains only for me to say one last time, may it please your Honour."

K Leigh said:

"May it please the Court. On behalf of the Australian Government and the people of Australia it is a great pleasure to be here at this special sitting of the Supreme Court of Tasmania to pay tribute to the Hon. Chief Justice Peter Underwood. The Attorney-General, the Hon. Robert McClelland MP very much regrets that he is unable to be here today. He has asked that I convey to your Honour his best wishes for your retirement from your judicial office and in the fulfilment of your appointment as Tasmania's 27th Governor.

Chief Justice, it is more than clear that the transition you are about to make represents the culmination of a highly distinguished career. Your career takes in not only more than twenty years of dedicated service to this Court but also very many contributions to national judicial bodies. Your Honour's position as Deputy President of the Australian Defence Force Discipline Appeal Tribunal is one of the reasons why I am here today to represent the Commonwealth Attorney-General.

Your Honour's appointment to this office had its origins in your early service in the Royal Australian Naval Reserve. Your Honour continued your commitment to naval service whilst undertaking a Bachelor of Laws degree at the University of Tasmania. You were commissioned as a sub-lieutenant from 1958 to 1961 while completing your degree in 1960.

In 1960 your Honour was admitted to practise in Tasmania and your Honour progressed your civil, criminal and constitutional expertise. As has been mentioned, one of your Honour's most important roles was as counsel for the Commonwealth in the *Tasmanian Dams* case in 1983. Your subsequent career is testament to the fact that you readily overcame any unfair perception of centralist tendencies that might have arisen out of your participation in that case.

I am informed by a colleague in the Commonwealth Attorney General's Department, who was, at that stage the most junior member of the legal team on that case, that your legal contribution was invaluable.

In addition to your practice as the Bar, your Honour served the community in many ways. Your Honour was Director of the National Heart Foundation for three years from 1970, was a member of the Tasmanian Law Reform Commission from 1977, the Disciplinary Committee of the Tasmanian Law Society from 1980, the Supreme Court Rules Committee, as well as the Tasmanian Arts Advisory Board from 1981, to name but a few. So to free up spaces for other people on these bodies it was thought necessary to weigh your Honour down with the duties of judicial office in 1984. Your Honour will, I know, take that last remark in the spirit in which it was intended. Your Honour is widely acknowledged, not only as an outstanding judicial mind but also for your excellent sense of humour.

Throughout your career, your Honour has had a strong interest in education, from your involvement in the teaching of advocacy and practical legal training through to advocating the cause of judicial education. Your role since July 2007 as Chair of the Council of the National Judicial College of Australia is evidence of your Honour's high esteem amongst your colleagues. Your Honour was nominated to the Council by the Chief Justices of the Supreme Courts of the States and Territories and you were appointed as Chair of the Council by the Chief Justice of the High Court. I have had the benefit of working with your Honour in this role, and so I can pay tribute from my personal experience to your highly effective and yet congenial style. In the relatively short time that you've been with the College your Honour has accomplished ground breaking work in convening a program for Heads of Jurisdiction. Your Honour has encouraged your colleagues to talk about the challenges of being a judicial leader. Your colleagues at the College and the Heads of Jurisdiction have praised your Honour's abilities as an outstanding facilitator. Indeed, your Honour is repeatedly described by the legal community as an exceptionably personable collaborator, a people person. This sentiment is echoed by my departmental colleagues who experienced the efficacy and good humour with which your Honour conducted meetings as President of the Australian Institute of Judicial Administration. Your Honour's role as the convenor of the Institute's Technology for Justice Conference Steering Committee reflects another of your Honour's championed causes.

If I may borrow from a speech your Honour gave to the National Judicial College in 2004 you said:

> When I started out the latest technology in Chambers was an electric typewriter with a golf ball and a Gestetner copying machine, the handle of which was vigorously turned by an aging but strong armed lady in order to distribute our judicial words of wisdom to an eager public.

Your Honour will be pleased to note that much of the material for this speech, including this excerpt, was acquired by virtue of the internet. You may therefore assume that your efforts towards advancing access to justice through technology have borne fruit.

Chief Justice, your vivacity, enthusiasm for your work, and zest for life is such that a great number of your colleagues can scarcely believe that you are now retiring from the judiciary. If we are to lose you from judicial office it is only fitting that it is to take up a position that will make good use of your congeniality, compassion, organisational capacity and all the other qualities that make you a role model to the legal community. You are justly proud of this beautiful State of Tasmania and you will undoubtedly serve the Tasmanian people well. On behalf of the Australian Government I thank you for your service to date, congratulate you on your appointment as Governor of Tasmania and extend to you my best wishes for the future. May it please the Court."

M Schyvens said:

"May it please the Court. As the President of the Law Society of Tasmania I take this opportunity to thank you on behalf of our five hundred and

forty seven members for not only your contribution to the administration of justice in this State as a result of having presided on the Supreme Court bench for over twenty three years, the last three as Chief Justice, but also for your support and contributions to the Society and the wider legal profession.

Your Honour was a member of the Council of the Law Society between 1967 and 1973 and I note that many of your fellow councillors during that period also went on to achieve distinction in the law. The Council minutes of that period reveal your Honour's active involvement in law reform and social justice issues. In particular I note your Honour was one of the Society's representatives on the Standing Committee on Legal Aid and a member of the Legal Assistance Scheme Committee. Council minutes of 5 February 1973 also reveal that your Honour joined with a fellow council member, the now Justice Crawford, to propose a motion expressing disapproval of paragraphs 3 and 4 of the Master's circular on Inquiry Agent Fees under the *Matrimonial Causes Act*. Apparently, the then Master was purporting to make a general ruling on the matters which, in your Honour's view, required the exercise of judicial discretion. Clearly, your Honour was already thinking like a judge but, unfortunately, your Council colleagues were not so inclined to battle the Master and the motion was lost, a feeling I am not unfamiliar with.

Your Honour has been well-known for innovation during your time on the bench whether in terms of procedural reforms or the implementation of information technology into our Court system. No doubt such reforms have significantly contributed to the finding of the Productivity Commission's Report of Government Services released on 31 January this year, that the Tasmanian Supreme Court is the most efficient in the nation in terms of the case clearance rates. I note that your Honour, whilst Chair of an Australian Institute of Judicial Administration Committee, was the impetus behind a major conference on the topic of Technology for Justice. I have learned in this last week that such a passion for information technology was evident even in the 1970s. As a partner of the firm, Murdoch, Clarke, Cosgrove & Drake as it was then known, I understand your interest in technology resulted in that firm being the very first in the State to embrace the computer, a machine which apparently filled an entire office. I am further told that to ensure the accuracy of the new technology, you personally spent many weekends pouring over the reams of data produced whilst listening at a less than a dulcet level to the well-known musical genre of Dutch College Swing Band. Whilst I personally have no issue with such music, my source on this topic boldly suggested that as computer technology has improved and refined over the years, so has your Honour's taste in music.

Whilst on the topic of music, I am further advised that in your Honour's younger days you were an integral member of the Stork Club, a jazz club operating within the Polish Club in New Town. Your responsibilities, as I understand it, were to collect the patrons' entry fees on the door and to control the lighting during the course of the evening, responsibilities which provided sufficient income to fund your very first overseas travels. One can only hope that your previous favourable experiences in collecting such entry fees will not result in any future change of operations at Government House. But at least if

we are driving past Government House and we notice sudden changes in the lighting, we will all understand.

On 2 December 2004, upon taking the office of Chief Justice, you stated that the role of Chief Justice includes preserving the independence of the judiciary as a separate arm of government, enhancing public confidence in the Courts and the judiciary and maintaining high standards of judicial administration. Your Honour has admirably carried out each of those very important tasks, not only whilst as Chief Justice but at all times since commencing as a Judge in the Supreme Court in 1984.

As your Honour moves from the role of twelfth Chief Justice of Australia's oldest Supreme Court to being the twenty seventh Governor of Tasmania the Society wishes both you and Mrs Underwood every success in your new role. We have no doubt that Tasmania as a whole stands to benefit from the humanity, judgement and innovation you have shown during your time in this Court. Just as with former Chief Justices, Sir Guy Green and the Hon. William Cox there is no doubt that the onerous responsibility of Governor will be carried out with distinction by yet another student who commenced law school in Room P at the University of Tasmania on the Domain site on the first Monday in March, 1954. May it please the Court."

C R Rheinberger said:

"May it please the Court. Chief Justice, your Honours, and guests, it is my great pleasure to address your Honour today on behalf of the Bar Association. It would appear that I am in the unenviable position of being the fifth speaker this morning and as I suspected, on the topic of your Honour it has all been said. Fortunately as a seasoned Crown counsel I have a cunning fallback position.

My cunning fallback position is to read to your Honour a passage from the renowned Japanese author, Mr Suzuki Sapporo's book entitled The Art of Origami and its significance in the Supreme Court. As appealing at that may sound I would like to address your Honour.

Your Honour's almost twenty four years on the bench has seen your Honour serve the legal profession and people of Tasmania with great distinction. In court your Honour has maintained strong integrity and defended judicial independence, all of which has been achieved with a sense of humour and a strong sense of compassion. Those observing in your Honour's Court often comment that justice was done or seen to be done. This philosophy is not an ideal that your Honour just gives lip service to but is an ideal that your Honour firmly believes in.

One of the other ideals your Honour has been passionate about is the importance of the jury in the legal system. Your Honour has always maintained that the jury should truly be representative of the community in order for the justice system to operate effectively, so in turn that the community has confidence in the system. Your Honour, therefore, has been instrumental in ensuring that Tasmania has a more informed jury, a better paid jury, and a jury

that is appreciated and treated with respect. And as well as considering the strategic bigger picture, your Honour has never lost sight of the importance of the day to day operation of the Court. A good example that comes to mind is your Honour's insistence on the use of appropriate language in the courtroom. I well remember, as a very very junior Crown counsel, assisting in the prosecution of a notorious underworld criminal. Whilst this notorious underworld criminal was giving his evidence he was prone to use 'f' words, 'p' words, even 's' words, to which your Honour, without fear or favour, and very bravely I thought, responded to the said notorious underworld criminal, "Mr Notorious underworld criminal, we don't use language like that in our Court", to which the notorious underworld criminal immediately replied and was repentant and apologised to your Honour and the Court.

The Bar Association has enjoyed a long relationship with your Honour as a member, a past president, and more recently as a life member. You have been a tremendous supporter of the Association and have on many occasions expended your time and knowledge through speaking at seminars and attending Bar Conventions. Your Honour has always made yourself available to discuss issues relevant to members, and we thank you for your patience and your wisdom.

Your Honour has freely mixed with the profession and has tirelessly played a role in continuing education of the young and the not so young members of the profession, and for that we are also very grateful. The State will miss you as Chief Justice but will be well served by your Honour in your new role and venture. So it is with great sincerity I say thank you for your significant contributions and wish you and Frances all the very best. May it please, your Honour."

Underwood CJ said:

"Well as counsel have said in their most generous remarks, I was appointed a judge of this Court in September 1984, so last September marked my twenty third year of judicial life, and according to my calculations, in that time I have written over three hundred civil judgments at first instance, presided over something in the order of four hundred and fifty criminal trials and, in addition, I have sat on, and written judgments in, approximately two hundred and thirty Court of Criminal Appeal or Full Court cases. And although some of my judgments have been overturned by a misguided Court of Appeal, only twice has a re-trial been ordered over that time. And lastly, on the statistical side, the Court sentencing data base tells me that since 1989 I have imposed sentence in just under a thousand cases.

Now I well recall the first time I sat in this Court. Counsel opened the plaintiff's case by telling me that his client claimed damages for psychiatric injury when he cut himself a slice of bread, ate it, and then discovered half a mouse in the remains of the loaf. I, of course, immediately recognized this as a spoof. It was not a genuine claim at all but a joke to play on the new judge, a sort of Tasmanian version of *Donoghue v. Stevenson**. So to show that I was

*Editor's note: [1932] AC 562.

really with all this, I just laughed and said, "Oh yeah, and I suppose you're going to tell me that the plaintiff then had a nervous breakdown, I suppose". I then smirked widely round the Court to show how clever I had been, until I saw the look of horror and disbelief on the plaintiff's face, as already suffering from a post-traumatic stress disorder, was rapidly reassessing his view of the Tasmanian judicial system, the principles of fairness and justice, and his chance of having his genuine claim adjudicated by this idiotic smirking judge on the bench. So I can only hope that my judicial performance improved after that somewhat wobbly start.

A great deal about this Court has changed in the 23 years that I have passed here since that forensic catastrophe. Ms Leigh has referred to a paper I gave in 2004 and I had recourse to it also for this mornings proceedings because, as she says, it was true that when I began here the latest technology in chambers truly was an electronic typewriter with a golf ball and this Gestetner copy machine, to which Ms Leigh refers. In those days, case management was an expression not to be mentioned by the junior judge, for it was quite clear that he had no proper comprehension of the role of a judge and the independence of the judiciary. In those days, the collective wisdom was that judges had no role to play in the pre-trial management of a case, for to do so would mean that he - and there were no female judges in those days - was stepping between a litigant and his or her solicitor, and that was inconsistent with the duties of judicial office. As for the education of judges, the very thought of it put at peril not only the independence of the judiciary but also the very rule of law itself. Indeed, any attempt to educate a judge would surely cause the sky to fall in.

Now I remind you all that in those days, women and children fell into a class of witnesses whose evidence was so suspect that juries had to be directed that it was unsafe to convict on it, unless that evidence was corroborated. In those days, it was understood that the most important prerequisite for taking up judicial appointment was previous practical experience as a barrister in the courts. Jim Wood, J. of the Supreme Court of New South Wales once described it this way when he said:

> The conventional wisdom seems to have been that a competent trial judge will emerge from the chrysalis of an experienced advocate within the minutes required to take the judicial oath of office.

In the last twenty three years society has become primarily knowledge based and its views and attitudes towards so many things have altered dramatically in that time. By way of example only, I refer to the shift in thinking over the last twenty years about the indigenous population of this country and land rights, and about homosexuality and gay rights. I refer to the change that has occurred in the role of women in society and the workplace and the approach taken today when dealing with complaints of sexual and physical abuse of women and children.

In the conduct of curial business the biggest changes in the last two decades have been the introduction of case management, to which Mr Sealy referred, and alternative dispute resolution and after some initial resistance by both the Bench and Bar - and it was resistance Mr Sealy - not as you politely

put it, both are now widely accepted as part of the litigious process designed to reduce delay and cost. Over the last two decades the silicon chip has come to dominate every facet of our lives and I venture to suggest there is virtually no aspect of modern living that is not dependent upon a computer. So Ms Leigh, I do not know what has happened to our Gestetner machine or the lady who used to turn its handle but I believe the electric typewriter has long been buried at the tip and our judgments are dispersed to the public electronically.

Another significant development over the twenty three years that I have sat on this Bench is the change that has occurred in the attitude to judicial education – it is no longer seen as a threat to judicial independence. A decade ago a presenter to a National Judicial College of Australia program argued that judicial education, while new to the common law tradition, is becoming integral to the standing of the judiciary and offers an appropriate means of providing accountability without violating independence. He wrote that this change was heralded by widespread complaints of gender bias and cultural insensitivity and that led to the introduction of judicial education on gender and cultural awareness. I would respectfully adopt the words of the Chief Justice of Australia when he said a few years ago:

> Judicial education is no longer seen as requiring justification, we are past the stage of arguing about whether there should be formal arrangements for orientation and instruction of newly appointed judges and magistrates and for their continuing education.

He said there are approximately eight hundred and eighty judicial officers in Australia and the idea that all or most of them have had sufficient practical experience before appointment to slip comfortably into their judicial roles without the need of further assistance and that thereafter, throughout their judicial careers, they would keep abreast of developments in the law on their own initiative is unacceptable.

May I say that it has been a great privilege for me to have been on this Court during this time of change, and I would like to think that during my time, particularly the last three years as Chief Justice, I have been able to make a contribution to the reduction of delay and cost associated with litigation and made an improvement in the access to the Court. I have been fortunate enough, as Ms Leigh mentioned, to use my judicial office to take part in judicial reform nationally, particularly in my term as President of the Australian Institute of Judicial Administration, and later as Chair of the National Judicial College of Australia. And I truly have, indeed, enjoyed a privileged and interesting professional career. Of course, I was not able to do these things alone and I would like to take this opportunity to thank all the staff of this Court who have given me unstinting support and assistance during the time I have been here. They work as a team and I am very proud of them and the service that they give the Tasmanian community. Many of them I should like to thank personally, but I am sure that they will understand that to do so will unduly lengthen this already over long farewell. But I would like to say thank you to my associate, Juanita Schaller, who is the current face representing a long line of young lawyers who have worked with me over the years as my associate. Their youth,

enthusiasm and sense of humour brightened every day in chambers. I would like to thank Alison Fletcher, my very capable daily assistant, proof reader, car driver, and general support person, and I wish her all the best with her studies in law at the University. I owe Christine Parker an enormous debt of gratitude, for she has been my personal assistant for more than twenty years, poor thing. Nothing was a trouble for Christine and for her willing uncomplaining, at least in my presence, help over such a long time, I am very grateful indeed.

It would be remiss of me not to pay tribute to Ian Ritchard, who was Registrar of this Court for eighteen years and is here this morning, for the Court owes him a great debt for his tremendous contribution by way of the introduction of successful alternative dispute resolution and modern technology, and on a personal note I would like to thank him for his inspiration, support and friendship.

To those judges who have helped and encouraged me I also say thank you, not just for their support of course but also for their friendship and collegiality.

And last but by no means least I would like to publicly thank all the members of my large family who have always encouraged and supported me as well as patiently listened, apparently with deep interest, while over the dinner table I carefully explained to them such fascinating matters as the independence of judiciary and the significance of the rule of law, but most important of all is my wife for thirty years, Frances, who throughout has been my companion, my guide, my adviser and dispenser of sound judgement, all the while whilst successfully pursuing her own professional career.

I am very honoured to have been chosen for appointment as the next Governor of Tasmania and will go from here to my new job with the hope that whilst holding that high office I will be able to make a different but equally worthwhile contribution to the welfare of this State and its people. So it is time to take off the wig and judicial robes but before doing so I would like to very sincerely thank everyone here today who have done me the great honour of coming along and also listening, apparently patiently and with great interest, to me reminisce away here. I could actually go on for about another three hours if you would really like me to, but I realise – yes, I realise.

I would particularly like to thank Ms Leigh, who appeared for the Commonwealth Attorney-General, who has travelled from Canberra for this mornings sitting, and also to all counsel at the Bar, my brother judge, Crawford, J. for the gracious words that have been said today. And so it remains only for me to say for the last time, the Court is adjourned. Thank you."

THE COURT ADJOURNED

On 12 April 2008 the Honourable STEVEN KONS, MHA resigned his office as Attorney-General and the Honourable DAVID EDWARD LLEWELLYN, MHA was appointed in his place.

On 24 April 2008 the Honourable EWAN CHARLES CRAWFORD was appointed as Chief Justice of the Supreme Court in place of the Honourable PETER GEORGE UNDERWOOD, AO.

On 26 May 2008 the Honourable DAVID JAMES PORTER QC was appointed as a Puisne Judge of the Supreme Court in place of the Honourable EWAN CHARLES CRAWFORD.

The Honourable DAVID JAMES PORTER QC was the Editor of the *Tasmanian Reports* from 1994 (1 Tas R to 16 Tas R) until his appointment as a Puisne Judge of the Supreme Court. The Council of Law Reporting for Tasmania records its great appreciation for his many years of dedicated contribution to law reporting in Tasmania.

On 17 September 2008 the Honourable DAVID LLEWLLYN, MHA resigned his office as Attorney-General and the Honourable LARISSA TAHIREH GIDDINGS, MHA was appointed in his place.

On 17 November 2008 the Honourable PETER BUCHANAN, a Judge of Appeal of the Court of Appeal of the Supreme Court of Victoria, was appointed as an Acting Judge of the Supreme Court until the finalisation of an appeal from the judgment of *Garrott v. Tote Tasmania Pty Ltd* [2007] TASSC 101.

On 17 November 2008 the Honourable PHILIP MANDIE, a Judge of the Supreme Court of Victoria, was appointed as an Acting Judge of the Supreme Court until the finalisation of an appeal from the judgment of *Garrott v. Tote Tasmania Pty Ltd* [2007] TASSC 101.

CORRIGENDA

(1997) **7 Tas R 339**

Bull Nominees Pty Ltd v McElwee

Page 343 After the last sentence of the judgment add the following paragraphs:

"How should the discretion be exercised? I see no reason to interfere with the terms of the order made by the learned Master. Although the discretion to order costs conferred by the *Supreme Court Civil Procedure Act* 1932 and the *Rules of Court* is unfettered, Harman LJ in *Adam & Harvey, Ltd v International Maritime Supplies Co, Ltd* (supra) made it clear at 534, that, in his opinion, it was only in exceptional circumstances that a successful party on an interlocutory application was entitled to recover costs without awaiting the outcome of the action. Neill J appears to express approval of that general statement in *Allied Collection Agencies Ltd v Wood and another* (supra) at 181. That approach has received endorsement by the *Rules of Court* in the United Kingdom, New South Wales, the Northern Territory (O63.02(2)) and of the Federal Court.

There are good reasons for this approach. The appellant may be unsuccessful in the ultimate outcome of these proceedings, in which case any amount of costs recoverable by it against the respondent will be set off against the costs that it has to pay the respondent. Application of the practice will reduce the administrative burden and costs of several taxations. During the course of litigation there may well be several orders for costs, some of which will be in favour of one party and some of which will be in favour of the other party. Common sense dictates that the final calculation of various orders for costs should await the outcome of the litigation. Interlocutory orders for costs usually involve relatively small sums of money which do not warrant the trouble and expense of several taxations and enforcement proceedings. Further, the enforcement of orders for costs of interlocutory proceedings should not be used as a "lever" to persuade an impecunious party from prosecuting or defending the principal issues in the litigation. Of course, every case will turn upon its own facts, but in this case I see no reason to depart from what should be the ordinary exercise of the discretion in the making of an order for costs of interlocutory proceedings where it is appropriate that the successful party should have the costs of those proceedings viz, that they should be payable in any event.

I would dismiss the appeal."

(2005) **13 Tas R**

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

After "The Hon SHAN EVE TENNENT"

Insert "The Hon MICHAEL RODNEY HILL

Acting Judge"

(2005) **15 Tas R**

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

After "The Hon SHAN EVE TENNENT"

Insert "The Hon MICHAEL RODNEY HILL

Acting Judge"

(2007) **17 Tas R 93**

Marshall v B

Page 93 — In the catchwords, delete "*Children, Young Person and Their Families Act 1997 (Tas)*" and substitute "*Children, Young Persons and Their Families Act 1997 (Tas)*".

(2008) **17 Tas R 208**

Page v McGovern

Page 211 — Delete "*D F K Zeeman*" and substitute "*D F M Zeeman*".