

HON DAVID KINGSLEY MALCOLM, AC, QC

Condolence Motion

MR C.J. BARNETT (Cottesloe — Premier) [12.01 pm] — without notice: I move —

That this house records its sincere regret at the death of the Honourable David Kingsley Malcolm, AC, QC, and tenders its deep sympathy to his family.

I rise today to inform the house of the sad passing of the Honourable David Malcolm, AC, QC, former Chief Justice of the Supreme Court of Western Australia and Lieutenant-Governor, and quite simply a magnificent Western Australian.

David Kingsley Malcolm was born in Bunbury on 6 May 1938. He attended Guildford Grammar School and the University of Western Australia, and was awarded a Rhodes Scholarship in 1960. His academic career at Oxford University was stellar. He was accorded the rare honour of having been appointed an honorary fellow of his Oxford college, Wadham College.

Before serving as Chief Justice, David Malcolm was a deputy counsel for the Asian Development Bank, and one of Western Australia's most prominent Queen's Counsel. On 26 May 1988 he was appointed Chief Justice of the Supreme Court of Western Australia on the retirement of the widely respected Sir Francis Burt. Chief Justice Malcolm was a person of enormous energy and enthusiasm, and he coupled his unrivalled distinction as a judge with extraordinary further service to the community. In 1990 he also became Lieutenant-Governor of Western Australia, and devoted his time to countless charities and institutions, including the University of Western Australia, the International Commission of Jurists, the Special Air Service Resources Trust, Anglicare, rugby union and Australian Rules football in this state, and numerous medical research and treatment charities.

His term as Chief Justice was noteworthy not simply for his enormous capacity for work and the stellar example he set to his fellow judges, but also for the considerable changes and improvements he made to the workings of the court and to the administration of justice. As Chief Justice, David Malcolm chaired the Western Australian electoral distributions in 1994 and 2003. Not content to be a figurehead, he took a keen and perceptive interest in the entire redistribution process. In the 2003 final report of the Electoral Distribution Commissioners, he did not hesitate to call for changes to the Electoral Distribution Act to reflect population realities. His impartiality was respected in this, the most sensitive area of the political process.

David Malcolm is widely acknowledged as one of the great advocates to have been produced by the profession in this state. He received the distinction of having been made an honorary bencher of one of the ancient English Inns of Court, Lincoln's Inn. He was made a Companion of the Order of Australia and was Western Australian Citizen of the Year in 2000. Chief Justice Malcolm received many awards during his career and earned great respect during his time as Chief Justice, receiving great acclaim from the legal profession on his retirement on 7 February 2006—only just short of 18 years. He was one of the longest serving Chief Justices in Western Australian history. At his farewell, the then Attorney General, Hon Jim McGinty, commented on the landmark judgement that David Malcolm had handed down in the appeal of John Button, a high-profile case in which a manslaughter conviction was quashed more than 38 years after the event. He later became professor of law at the University of Notre Dame Australia, Fremantle, and imparted great wisdom and knowledge to those in pursuit of a legal profession.

On behalf of the Western Australian Parliament, I offer the deepest condolences of the state to David's wife, Kaaren, and daughter, Manisha, and to all members of the family. Kaaren and Manisha are in the Speaker's gallery, and on a more personal note Lynn and I extend our sympathy. I knew David Malcolm, obviously in his official role and in my role over the years, but I particularly got to know him better through the Special Air Service Resources Trust that he chaired, and also as a member of my electorate. David and Kaaren literally lived down the hill a couple of blocks away from our home. He was a wonderful person. It is an absolute privilege to have known him. He made an enormous contribution to this state and to the justice system. Again, I offer my sympathy to Kaaren and Manisha.

MR M. McGOWAN (Rockingham — Leader of the Opposition) [12.05 pm]: I also join with the government in acknowledging the life and times of the Honourable David Kingsley Malcolm, AC, QC—a marvellous Western Australian whom I personally found to be a pure gentleman, a person of great intellect and great friendliness, and always an interesting person to deal with and talk to.

David Malcolm was born in 1938 and passed away on 20 October of this year. He came from Bunbury and was educated at Guildford Grammar School. He was a Rhodes scholar from Western Australia in 1960. His wife, Kaaren, and daughter, Manisha, are in the gallery today and, from all I have read, were a wonderful and very close family. At one point in time, tragically, David lost an adopted son who was a sailor in the Royal Australian

Extract from Hansard

[ASSEMBLY — Wednesday, 22 October 2014]

p7729b-7735a

Mr Colin Barnett; Mr Mark McGowan; Mr Terry Waldron; Mr John Quigley; Mr John Day; Ms Lisa Baker; Dr Tony Buti; Mrs Michelle Roberts; Mr Ben Wyatt; Mr Peter Tinley

Navy. He passed away maybe 20 or so years ago. I was on duty that night in—I think—the early 1990s and I recall receiving a signal that came in that indicated this had taken place and having to be responsible for ensuring the information was passed along to Mr Malcolm.

He was a prominent QC and he appeared before the Privy Council of the United Kingdom as a barrister. He served as Chief Justice from 1988 until 2006; an extraordinarily long period of 18 years, and when he left office he was the longest serving Chief Justice in the country. He was the first to be appointed directly to the office from the ranks of the practising profession since the third Chief Justice, Sir Alexander Onslow, was appointed in 1883. He was the first Chief Justice of Western Australia to go on talkback radio—a very brave man! He pioneered the process of having Aboriginal liaison officers attached to the courts; he chaired the Law Reform Commission in the 1980s; he chaired the Biennial Conferences of Chief Justices of Asia and the Pacific; he chaired the Advisory Board, Crime Research Centre of the University of Western Australia; he was a member of the University of Western Australia Senate; and he chaired the board of trustees of the Special Air Service Resources Trust.

I was listening to ABC radio yesterday and heard a gentleman, who was a friend of former Chief Justice Malcolm, asked, “Why was Chief Justice Malcolm never appointed to the High Court of Australia?” Perhaps he did not want to leave Western Australia and move to Canberra, which would be entirely understandable. On the other hand, the gentleman said that Chief Justice Malcolm as a young man had at one point unsuccessfully stood for Parliament as a Liberal Party candidate. Therefore, in the days of the federal Labor government of the 1980s and 1990s perhaps there was some suspicion and it did not wish to appoint him to the High Court. Then when the Liberal government came in in the mid-1990s, its view was that he was too left wing! Perhaps it was also not too keen on appointing him to the High Court! However, my view, which I believe is the view of the profession in this state, is that he would have made an outstanding justice of the High Court and perhaps Chief Justice of Australia. He told university students in 1997 that his motto was twofold. He said, “Take your work seriously, take any office you hold seriously, but don’t make the mistake of taking yourself too seriously. Secondly, however difficult and challenging the office or the task, find a way to make it fun. If it’s not fun, it’s not worth it”.

In 1990, he told the state’s daily newspaper, *The West Australian*, in relation to his job as Chief Justice, that “the work is unrelenting and the consequences of mistakes are mind-boggling”. But, as we all know, that did not stop him from heaping more and more demands upon himself, as is clear from that list of activities that he undertook while Chief Justice and subsequent to being Chief Justice.

David Malcolm served as Lieutenant-Governor of Western Australia from 1990 until 2009. He then became Professor of Law at Notre Dame University in Fremantle.

At Chief Justice David Malcolm’s retirement, he was lauded by the then Attorney General, Jim McGinty. Also at his retirement, the current Chief Justice of Western Australian, Hon Wayne Martin, who also was appointed directly from the legal profession, said the following about David Malcolm —

Many of the changes and reforms introduced or overseen by your Honour have already been mentioned. Those I would like to single out for particular mention include the use of victim impact statements, the videotaping of evidence of children and vulnerable witness, gender bias and Indigenous issue training for Judges, the publication of sentencing summaries, the introduction of alternate dispute resolution as a standard part of the processes of the Court, the creation of the Court of Appeal, the use of a variety of innovative measures, including blitzes, to address the backlog of cases, and the occasional invitation of the electronic media into the courtroom.

Chief Justice Malcolm was a fine West Australian. He was a loving husband and father. He was a giant intellect. He put in place a range of reforms to the legal system of this state. He always had a deep and abiding concern for not just the state but those people less fortunate than himself. He carried that through in his practice of the law and in his activities as Chief Justice, and this state owes him a great debt of gratitude. I would like to close by once again passing on my regards to his family.

MR T.K. WALDRON (Wagin — Minister for Sport and Recreation) [12.12 pm]: I rise today to support this condolence motion on behalf of the National Party and to recognise the life and great contribution of Hon David Malcolm, AC, QC. As we have heard already from the Premier and from the Leader of the Opposition, his professional achievements have been extraordinary, from Rhodes Scholar to Lieutenant-Governor of Western Australia, and to Chief Justice of the Supreme Court of Western Australia. But it is also his great passion, energy and enthusiasm in serving his community that singles him out as a great Western Australian.

It is clear from what we have heard today that David Malcolm not only set a great example during his term as Chief Justice but also worked hard to change and improve the workings of the court for the better. Of course, his

Extract from Hansard

[ASSEMBLY — Wednesday, 22 October 2014]

p7729b-7735a

Mr Colin Barnett; Mr Mark McGowan; Mr Terry Waldron; Mr John Quigley; Mr John Day; Ms Lisa Baker; Dr Tony Buti; Mrs Michelle Roberts; Mr Ben Wyatt; Mr Peter Tinley

landmark judgement in the appeal of John Button is well known, as has been mentioned today. That is a case that I followed closely and with great interest.

I was fortunate to meet David Malcolm. I met him on only a couple of occasions, but I have to say he left a great impression on me as a person of great intellect and quality. Above all, he was so friendly. I remember that on the two occasions when I met him, we talked about sport on both those occasions. That is what I remember personally.

On behalf of the National Party, I would like to convey our very sincere condolences to David's family and friends.

MR J.R. QUIGLEY (Butler) [12.13 pm]: I am very pleased to stand this afternoon to join with the government and other members of this chamber in this condolence motion. The late Hon David Kingsley Malcolm, AC, QC, passed from this world earlier this week. I note that his widow, Kaaren, and daughter, Manisha, are with us this afternoon in the gallery, so I would like to start by offering my deepest and sincerest condolences to Kaaren and Manisha.

As has been already stated, David Kingsley Malcolm, AC, QC, was born in Bunbury in 1938. No-one would have known at the time of his birth that this was a once-in-a-generation person who was entering the community of Western Australia. In 1950, he undertook the academic scholarship test for Guildford Grammar School while a student in Bunbury. He passed that test with flying colours, and he entered the student community at Guildford Grammar the following year. By the time he had reached the end of his scholastic career at Guildford Grammar, he was captain of that school.

He then undertook legal studies at the Law School of the University of Western Australia, where he excelled again, graduating with first-class honours. He was also known for his sporting prowess, and for his first three years at law school he played Australian Rules football, fortuitously changing to rugby union in his final year, because he was named a Rhodes scholar and went to Oxford University, where, as the Premier has already mentioned, he excelled in his studies and became an honorary fellow of his college, and also played for Oxford University in its rugby union team. Later in life on social occasions, when we would reminisce about different things, it was clear that his time on the rugby field at Oxford University was a highlight of his young life and it brought him much pleasure to remember those years.

As has been said, David Malcolm was appointed straight from the legal profession to the position of Chief Justice of the Supreme Court of Western Australia. He was only the second person to have done that. As the Leader of the Opposition has said, when Sir Alexander Onslow was appointed from the legal profession to be Chief Justice, there was only one Supreme Court judge, so a person who was appointed as a Supreme Court judge would become the Chief Justice. David Malcolm was just such a standout jurist that it was obvious that he would go to the Supreme Court, and it was a very wise choice to make him Chief Justice.

Just to reminisce a bit upon his legal career, after graduating from Oxford, as has been mentioned, he was employed for three years as deputy counsel for the Asian Development Bank in Manila, and there started a lifelong association with LAWASIA. Right until the time of his death, he was involved with LAWASIA. He was chair of the Conference of Chief Justices of Asia and the Pacific of LAWASIA and distinguished himself in that role.

He was, of course, a jurist of national significance—not just important to Western Australia, but to all of Australia. Indeed, in January 1998, he was inducted as only the fourth life member of the Australian Bar Association. The only other life members who have been appointed are Sir Gerard Brennan, who was a former Chief Justice of the High Court of Australia, and Mary Gaudron and Michael McHugh, who were justices of the High Court. So, by the time he was inducted as a life member, each of those other life members had served on the High Court, one of those as Chief Justice.

When David Malcolm was practising law—I remember this well—if a red hot commercial dispute was on, each side would rush to try to secure the services of David Malcolm, QC as their lead counsel. Those who were second to the post and did not have the advantage of hiring David would invariably engage an eastern states' silk to oppose him, because his ability and reputation was so high and well regarded.

This Parliament should also recognise in this condolence motion—as also recorded in *The Australian Law Journal* of 1996—that he worked very hard in the judicial conference of LAWASIA to establish the principles and tenets of judicial independence. These were agreed to in 1995 by LAWASIA, the Law Association for Asia and the Pacific, and adopted by Chief Justices from 20 nations at the sixth conference of Chief Justices of Asia and the Pacific Region held in Beijing. Subsequently, in Manila in 1997, the statement on judicial independence was further accepted by a total of 32 countries in the Asia-Pacific region. David Kingsley Malcolm, AC, QC, not only achieved pre-eminence in the legal profession in Western Australia, he was a significant figure in the

Mr Colin Barnett; Mr Mark McGowan; Mr Terry Waldron; Mr John Quigley; Mr John Day; Ms Lisa Baker; Dr Tony Buti; Mrs Michelle Roberts; Mr Ben Wyatt; Mr Peter Tinley

Australian legal profession and beyond, including the Asian sphere of its legal profession. He was very highly regarded throughout Australia and Asia.

Mention has been made of David Malcolm's achievements in reforming and his innovation within the Supreme Court of Western Australia. We spoke yesterday of the passing of Gough Whitlam, QC. It was reflected that he came into Australian politics and was an agent for change, and Australia was never the same after his Prime Ministership. The same can be said of the late David Malcolm, AC, QC. He came to the Supreme Court in 1988 when there were 10 judges on the bench. As David himself reflected when he was inducted as Chief Justice, there was not a fax machine in the court and there were 10 judges. By the time he retired as Chief Justice, there were 20 judges on the bench. The usage of electronic transcripts and the like, as Mr Speaker knows, became rather commonplace in the Supreme Court. It was noted at his retirement in 1994 that the trial and appeal of the late Laurie Connell was the first time that electronic transcripts and electronic exhibits had been used. He promoted that and it has become common course in the Supreme Court today. Mention has also been made of David's innovation in bringing to the court Aboriginal liaison officers and court information officers so that members of the public and the media can access information out of court. It opened the court up to the public of Western Australia.

David Malcolm was of course the longest serving Chief Justice in Australia and a former Lieutenant-Governor of Western Australia. He served this community magnificently in those roles for the best part of 18 years. Before that, in his engagement with and patronage of community groups, he has served Western Australia throughout his life magnificently. We all rise this afternoon in this chamber to give thanks for the life of David Kingsley Malcolm, AC, QC, and to extend once again to his widow and daughter our deepest and sincerest condolences. As a Parliament we jointly express gratitude that such a person stepped forward to provide Western Australia with such leadership and service.

MR J.H.D. DAY (Kalamunda — Leader of the House) [12.23 pm]: I am pleased to also have the opportunity to make some brief comments during this condolence motion for the late Hon David Kingsley Malcolm. I extend my condolences and sympathy to Kaaren and Manisha, and to David's wider family.

It is not surprising, given the heights to which David Malcolm rose in the legal profession and the judiciary in Western Australia, that he had a very strong academic record. As we have heard, he was a student and boarder at Guildford Grammar School from 1950 to 1955. Not surprisingly, he showed early signs of leadership, having been the house captain of School house where he boarded, and school captain in 1955. He was awarded various scholarships and a significant number of academic prizes whilst at Guildford Grammar School; in fact, 14 academic prizes. He was also a member of the school choir from 1951 to 1955 and was involved in the school army cadet unit, rising to the rank of cadet under officer and company sergeant major. David had a strong sporting involvement, including rowing for the second eight whilst at Guildford Grammar School.

Following school, he enrolled as a student in law at the University of Western Australia. Whilst there, he resided as a student within St George's College. He also rose to the highest level as a student there—he was senior student at St George's College, if my memory serves me correctly, in 1959. David was also selected as the Rhodes Scholar for Western Australia at the end of his time as a student at the University of WA. He represented the college in several sports. He also made his mark in debating and amateur drama productions. During his time at university, both at the University of WA and at the University of Oxford, he had a strong sporting involvement. He represented UWA in Australian Rules football and rugby union, and then played rugby for the Oxford University Rugby Football Club, the Greyhounds, and Wadham College during his time there. He graduated from Oxford in 1962 with first-class honours in civil law. He continued to play rugby for the Associates Rugby Union Football Club in Perth for quite some time after he returned to Western Australia.

David Malcolm has been widely recognised for his contribution to the legal profession and to the judiciary. He served almost 18 years as Chief Justice of Western Australia, a very substantial contribution. I suspect what is less well known was the involvement of David Malcolm in the hills community in Perth, particularly in the Shire of Mundaring where he and his then wife, the late Jenny Malcolm, lived for many years initially in Boya and then on a larger equestrian property in Mundaring. They had a very strong involvement in the equestrian community and activities in Western Australia, obviously in the local community but more widely in Western Australia as well. I well recall both David and Jenny Malcolm being instrumental in the establishment of the local pony club, the Darlington Pony Club, in 1970 or thereabouts, to provide opportunities for children and young people who were interested in riding in the area at the time. I well recall that because although I was not an able horse rider, my sister was, and my parents were involved with David and Jenny Malcolm in establishing the Darlington Pony Club together with the parents of the member for Maylands, from whom I look forward to hearing about her involvement in that respect soon.

Extract from Hansard

[ASSEMBLY — Wednesday, 22 October 2014]

p7729b-7735a

Mr Colin Barnett; Mr Mark McGowan; Mr Terry Waldron; Mr John Quigley; Mr John Day; Ms Lisa Baker; Dr Tony Buti; Mrs Michelle Roberts; Mr Ben Wyatt; Mr Peter Tinley

David Malcolm was good enough to keep in contact with my late mother for many years following that time through the exchange of Christmas cards in particular. Quite clearly he was very disciplined and organised in that respect, and he did so up until not all that long ago; certainly within the last 10 years.

I acknowledge and reflect on the very positive contribution that David Malcolm made to not only the legal profession and the judiciary in Western Australia but also the much wider community in many respects including assisting young people in the way that I mentioned and his contribution to the equestrian community. Once again, I extend my condolences and sympathy to Kaaren and Manisha, and to David Malcolm's wider family.

MS L.L. BAKER (Maylands) [12.30 pm]: At the outset I apologise to Kaaren and Manisha because my knowledge of Hon David Malcolm goes back to about the same time as that of the Leader of the House. I have vivid memories of walking around cross-country courses in Helena Valley and seeing David with a pair of wire cutters and some wire on his shoulders, moving poles and building cross-country courses. I am not sure why, but he always had a number of young teenage girls helping him. He was a charismatic man and beautiful soul, and I have very fond memories of doing those long treks and building fences.

I did not know about David's career in Australian Rules football, because the David I knew was a cross-country rider—an eventer. He had a very big chestnut horse on which he evented moderately successfully, I think. I am not sure whether it was his chosen sport, but due to the circumstances at the time of having a wife who was very passionate about horses and eventing, he found himself consumed by the sport, as many of us are. He and Jenny found me my very first competition horse at the time that my mum and dad were working with the Leader of the House's mum and dad to set up the Darlington Pony Club, and I rode her for about five or six years.

David Malcolm was a fantastic human being. Members have heard the accolades and I could not possibly add anything to them. However, I want to mention some of the other aspects I knew of David's life. He was involved with the Women's Council for Domestic and Family Violence Services and supported the work that opposed domestic violence—one of the charities that he supported strongly throughout his life. He was at one time also a photographer of some notoriety. When he stopped thinking that it was a good idea to mount a 17-hand horse and pound flat-out across a cross-country course, he decided to pick up a camera and shoot the riders jumping, which was a better strategy for him. I still have the pictures that David took of me show jumping. They are in my home on a wall in a quiet spot that nobody ever sees—thank goodness!

Again on a lighter note, he was an amazing career adviser. When I had decided at about the age of 16 years what my future career would be, I remember thinking, who do I know who is a really important and clever person. It was David Malcolm. I fronted him and asked whether he would mind writing me a reference so that I could apply for that job. He said, "Of course, Lisa. What is the job?" I told him that I wanted to be a flight attendant! He sat back and looked at me over his glasses, and said, "You might want to reconsider that." I am not sure whether he was saying something about flight attendants or about me—probably more about me; he knew me pretty well in those days. He was a great man and I have great memories of him.

Kaaren and Manisha, you have had a fantastic time with a wonderful individual, and I am very sorry, and you have my condolences.

DR A.D. BUTI (Armadale) [12.34]: I also rise to add my contribution to the condolence motion for the late Hon David Malcolm. As has been stated by other speakers, Chief Justice Malcolm was an outstanding jurist and lawyer. He was a Rhodes scholar, an outstanding law student, a brilliant commercial and equity barrister, and, as has been mentioned, he was the first Chief Justice to be appointed from the independent bar and not from among his fellow justices. He was also considered to be a reformist and a liberal, and a person who was very generous with his time. He was a champion of many community and charitable organisations.

In his reformist element, he sought to reform the operations of the court. As we all know, the demands of the Supreme Court have become great as time has progressed, and he sought to improve the speed with which decisions were granted and delivered and also the way hearings took place. He also stood up to governments. He was very concerned about the accommodation that judges had to endure in the Supreme Court of Western Australia building. He took up the matter of accommodation with Labor and Liberal governments and never stopped trying to improve the conditions of his fellow justices. He was also very supportive of his fellow justices. When Christine Wheeler was appointed as the first female to the Bench of the Supreme Court of Western Australia, he said that it was an exceptional and historic day in the history of Western Australia.

I was fortunate to meet Chief Justice Malcolm when I interviewed him for a book I was writing on Sir Ronald Wilson. He was very generous with his time and it was an incredible privilege to sit down with him and speak about the famous John Button appeal, the Darryl Beamish appeal and the trial of Eric Edgar Cooke, the serial murderer who was the last person to be hung in Western Australia. When he found out that I lived in Armadale, he told me how his parents and he on their journey from Perth to Bunbury would stop at the Narrogin

Mr Colin Barnett; Mr Mark McGowan; Mr Terry Waldron; Mr John Quigley; Mr John Day; Ms Lisa Baker; Dr Tony Buti; Mrs Michelle Roberts; Mr Ben Wyatt; Mr Peter Tinley

Inn, which was at the intersection of South Western Highway, Albany Highway and what is now Armadale Road, and take refreshments and continue on their journey.

David Malcolm had a leading role in the judgement that exonerated John Button for the murder of his girlfriend. He refused to sit on the Darryl Beamish appeal because, being the man of honour that he was, he had had discussions with Sir Francis Burt, the predecessor of Chief Justice David Malcolm, because Francis Burt had been the barrister for Darryl Beamish in a number of the earlier appeals. Probably nothing prevented him from sitting on that appeal, but being a person of high moral integrity, he thought that it would be best to not sit on the appeal that also returned a finding that the original guilty verdict of Darryl Beamish had been unsafe. He was also one of the justices in the final Mickelberg appeal, which also returned an unsafe decision on the earlier guilty conviction of the Mickelberg brothers.

He was also the Chief Justice during the WA Inc Royal Commission into Commercial Activities of Government and Other Matters. When the Carmen Lawrence government sought to appoint royal commissioners, pressure was placed on Chief Justice Malcolm to allow Justice Kennedy to be one of the royal commissioners. Chief Justice Malcolm was not keen about that suggestion because the workload of the justices of the Supreme Court was becoming onerous and he did not want to lose another one of his justices to the Western Australian royal commission, which was going to take some time. In fact, another commissioner, Justice Brinsden, had just retired early because of the workload of the Supreme Court, and Chief Justice Malcolm was very concerned about the extra workload that would be placed on the other justices if Justice Kennedy became one of the WA Inc royal commissioners. However, he allowed that to happen on the understanding that the government would appoint an additional justice to lighten the workload on the remaining justices of the Supreme Court.

David Malcolm's decisions were always very well crafted. As I have said, he was an outstanding lawyer and justice in some of the most important and significant cases in Western Australian judicial history, especially the Button and Mickelberg appeals. Chief Justice David Malcolm was a brilliant lawyer and jurist, a great Western Australian, and, more importantly for his family, a very nice man.

MRS M.H. ROBERTS (Midland) [12.39 pm]: I briefly put on the record some remarks about Hon David Malcolm. Colleagues in this house have already pointed out what a huge intellect he had and his very, very many achievements. I would like to add that he was a man of great heart, whom I met on a number of occasions; when we spoke, it was not generally on matters of law or those kinds of things. We talked about issues such as equal opportunity, gender equality and the plight of Aboriginal people in not only the justice system, but also the Aboriginal community. People may not know that he was patron of the National Sorry Day Committee, which released the "Bringing them home" report. He was also patron of the survival concerts held in the Supreme Court Gardens, and he hosted functions at the Supreme Court for National Reconciliation Week. I know firsthand that these matters were very dear to his heart. Often when people operate at a very high level and have huge academic and other achievements, as he did, they lose touch with those in the community who are less well-off. I put on record that Hon David Malcolm never lost touch with those people. He had huge empathy for those in the community who were disadvantaged, Aboriginal people and anyone suffering an injustice.

MR B.S. WYATT (Victoria Park) [12.40 pm]: I, too, rise to say a few words about Hon David Malcolm. The Chief Justice swore me in as a young lawyer. The Chief Justice and a number of other judges of the Supreme Court swore in about 40 or 50 of us on admission day in about February or March 1997. The Chief Justice occupied a position that had us all as young lawyers permanently terrified of him, but, of course, as many members have already said, his very gentle persona emerged over the years. I got to know him better once he left the bench and took on a role at Notre Dame University; I had more to do with him at that level, particularly regarding Aboriginal affairs. The shadow Attorney General has made the point about his role with Aboriginal liaison officers at the Supreme Court and the member for Midland talked about his various roles as a patron in the broader reconciliation movement.

We have been very fortunate in Western Australia with our Chief Justices—Francis Burt, David Malcolm and now Wayne Martin—over the past 20 or 30 years. Their legal minds would hold their own anywhere in the world in the commonwealth system. They took on not only the role of Chief Justice of our Supreme Court, but also understood their role as leaders in our legal profession and in our community, both while still sitting on the bench and afterwards, challenging not only Parliament, but also the community to reconsider laws. Certainly Chief Justice David Malcolm in his role on the Law Reform Commission had a vital role to play in ensuring that our law was modern and reflected our modern community, which is what our judiciary and our Parliament, I would like to think, tries to do.

No doubt David Malcolm's legacy in law is already entrenched and will be long remembered, similarly with former Chief Justice Francis Burt. I do not think I ever appeared before the good Chief Justice, but he swore me

Extract from Hansard

[ASSEMBLY — Wednesday, 22 October 2014]

p7729b-7735a

Mr Colin Barnett; Mr Mark McGowan; Mr Terry Waldron; Mr John Quigley; Mr John Day; Ms Lisa Baker; Dr Tony Buti; Mrs Michelle Roberts; Mr Ben Wyatt; Mr Peter Tinley

in as a young lawyer. I say to his family that they should be proud of his legacy as a man who strode not only Australia but also the Asian region, as we heard today, and left mighty footprints in the legal profession.

MR P.C. TINLEY (Willagee) [12.43 pm]: I want to record my story about the Honourable Chief Justice David Malcolm. I first came to know him in 1996, as it turns out. For those who may not be familiar, 1996 is a year in Western Australian military history that carries some great sadness; we lost 15 of our own in a Black Hawk helicopter accident in Queensland. The response from the Defence Force about compensation and support for families at that time was anything but adequate. Those young men lost their lives, and certainly those injured and their families who had to pick up and go on needed additional support from the community. A very interesting individual in Western Australia's business community, a chap by the name of Jeff Kazim, wandered into the Special Air Service barracks in a very interesting mode of dress—shorts, thongs and a T-shirt—and wanted to see the commanding officer of the SAS. The commanding officer said, firstly, “How did you get in here?”, and, secondly, “How can I help you?” He turned out to be a very interesting chap and a wealthy man in his own right for a range of very interesting reasons that are not worth going into now. He is a former 22 SAS—that is the United Kingdom SAS—and he certainly understood what the regiment was going through at the time and, as a Western Australian, what was required: the community needed to step up and assist those families in a very tragic moment. He wanted to establish a trust or a charity or some sort of arrangement to ensure that there were enough resources to respond to this accident and any future difficulties from which the Western Australian military personnel suffered.

Because of his nature he was a little difficult to sell on the Terrace, but also because of Jeff's nature he was extremely well connected. It was not long before Chief Justice David Malcolm, as he was at the time, became involved. He did not hesitate whatsoever to lend his name, weight and considerable intellect to the formation of the SAS Resources Trust and he went on to chair it for several years. I came to know him on that basis, and certainly the wider SAS regimental family came to know the work that he did to give the imprimatur that allowed that trust to grow to a significant resource and provide ongoing support to those families of the dead and the wounded from not only that particular accident but also subsequent conflicts and operations that the SAS has undertaken. This is a very sad day, but in my opinion it is also a day to celebrate the reach of what a significant Western Australian can do in ways that many of us never get to see.

The SPEAKER: Members, I would like the house to carry the motion by rising to observe a minute's silence.

Question passed; members standing.