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Oral History Program interview transcript

Interview details:

Registration number	OHC LYO.p.1
Date of interview	26 November 2019
Interviewer	Cathy Van Extel
Interviewee	The Honourable Peter Lyons QC
Location of interview	Supreme Court Library Queensland Level 12, QEII Courts of Law 415 George Street Brisbane QLD 4000
Access status	Open
Notes	This interview concerns the Hon Peter Lyons' life and career

Start of interview

Cathy Van Extel: [00:00:00] This is tape one of an interview with the Honourable Peter Lyons QC, retired Queensland Supreme Court Justice. The date is the 26th of October - it's not the 26th of October. The date is the 26th of November 2019 and we are recording this interview in Brisbane. Peter Lyons is speaking to me, Cathy Van Extel, for the Queensland Supreme Court Library, oral history project. Peter Lyons, Hello.

The Hon Peter Lyons QC: Hello, Cathy.

CVE: Now you were schooled in Brisbane, but studied a Bachelor of Arts at Villanova University in Pennsylvania in 1968, I think it was, when you graduated. What sort of career did you envisage for yourself in those early years?

PL: When I was in the United States from 1965 to 1968, I thought I might end up teaching mathematics. I did a double—I did the college degree with a double major in philosophy and mathematics.

CVE: What was it that drew you into a career in law?

PL: I guess, as much as anything, family background. [00:01:00] My father was a solicitor in Brisbane from 1946 until he died in 1969. One of my brothers was studying law in the mid-60s and another started in the late 60s. So when I decided I would move to law in 1972, I had quite a bit of background. In fact, I had spent a week working in my father's office as a boy at school, which I didn't particularly enjoy but nevertheless it wasn't enough to put me off.

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CVE: You were an articled clerk with your father's firm, MG Lyons & Co., and during that period you attained a law degree from The University of Queensland.

PL: Yes. In fact, I've finished the subjects for the law degree at the end of 1974, and I worked as articled clerk [00:02:00] with that firm for the year 1975.

CVE: And tell me about that period.

PL: I thoroughly enjoyed it. I guess because I was a little older and had a little bit more background than some people I was given the responsibility for all of the District and Magistrate's Court litigation for the firm, and it was a fairly large firm in those days, which in hindsight, might have been too much too soon. I naturally made some significant mistakes, which we generally managed to dig our way out of. But it was a really good experience. I got to do some court appearances for pleas of guilty in the Magistrate's Court and applications to have disqualifications from holding a driver's license lifted. So that was good, and [00:03:01] I was also given the task of indexing all of the opinions the firm held at that time and I think I completed it or I almost most completed during that year, which was very good for me intellectually because I got exposed to some of the work of some of the best legal minds in Brisbane over a number of years.

CVE: So it was a very good grounding to start with.

PL: It was, and I was lucky to have it. In those days some people came to the Bar without any previous experience of legal work and that was a bit more common than it is now. It is not good, I don't think from the public point of view for that to happen.

CVE: You were admitted as a barrister in December 1975. What were those early days like?

PL: I started in practice—I was admitted on—Thursday the 18th of December 1975. [00:04:01] I started in practice on Monday the 22nd of December, which was really an ideal time to start -

[Both laugh]

CVE: Right into the Christmas period.

PL: - if you're hoping to be busy. In the first month the only person who phoned me was my wife, so I—but I had no work from solicitors -

CVE: So a bit of a slow start in other words.

PL: A slow start. The only thing that kept me sane was that my pupil master was Ian Callinan. He was away for the whole of that period. He told me he would be very happy for me to work on any brief in his Chambers and that is what I did.

CVE: Ian Callinan, of course is a former High Court Justice. What influence did he have on the development of your career in those early days?

PL: He was extremely helpful to me in getting work in my first couple of years. He mentioned my name to some of the larger firms around town. So [00:05:01] I got work from them, which was a great start. He led me in a number of matters in my first few years as well., even though he didn't take silk until, I think, my second year at the Bar. He was a great admirer of Des Sturgess. He thought Des was a very good civil lawyer, which would surprise many people because he is

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famous as a criminal lawyer. But he had, I think, been Ian's master, and so Ian encouraged me to have contact with him, and as a result of that, quite early in my career, within a few months of starting, I was lucky enough to be briefed as Des's junior in a murder trial and that was a very good experience. They were—there was no dispute about the facts, the real issue was whether this English gentleman had murdered his wife in a [00:06:01] mental state which would result in the defense of diminished responsibility and the trial was successful in that sense. Because the defense was made out.

CVE: That was a criminal case, but I think at that time much of your work was around commercial and planning law, is that right?

PL: Planning law started a little bit later. I didn't do any subject relating to planning law at the University. But in my first year when I had a little bit of quiet time one day I happened to look at the rules relating to the Planning Court, and would you believe that day somebody briefed me in a Planning Court matter, and that was my first planning case. Amazing coincidences. I had more general civil work including commercial and personal injuries work. I guess there was a bit of administrative law work in those early days. [00:07:02] Unlike now junior barristers used to be briefed in very simple matters in the Supreme Court chamber list, which is now called the applications list. Things like a motion for probate, which is really a formality, would be given to people in the position I was in in my first couple of years. It was a little bit of money, but more importantly, it was the chance to stand up in court, become familiar with the court environment and also to get to know other practitioners, and in particular solicitors, who were our only source of work then.

CVE: You became Queen's Counsel in 1988. This of course was around the time of the Fitzgerald Inquiry.

PL: Yes.

CVE: What do you recall of that period?

PL: Quite a bit [both laugh]. There was a great deal of excitement when the Fitzgerald Inquiry was announced. I forget the precise details, but I think it was envisaged [00:08:02] to finish in three months?

CVE: It was.

PL: And it went for years [laughs]. Many people got briefed in the Fitzgerald Inquiry. I didn't. I got perhaps a connected brief which went for a long time and that was the Judges' Inquiry. So that commenced, as I recall, in about November of 1988. That is when a number of us were engaged as counsel assisting the commission.

CVE: So this was the Parliamentary Judges Commission of Inquiry -

PL: Correct.

CVE: - which was investigating or delving into the appropriateness of judges, Angelo Vasta and Eric Pratt, to remain in the judiciary. Tell me about your role, then as counsel assisting.

PL: Sure, Ian Hangar was the most senior barrister, I was the second-most senior having taken [00:09:02] silk within a month or so of our engagement. There were four more junior barristers.

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So, to speak about my role, I guess, in a sense Ian and I formulated what had to be done. The preparatory work we basically distributed amongst the other four barristers, and Ian and I generally did all the appearances before the commission.

CVE: The commission, I think, came down heavily against Angelo Vasta, but not so with Eric Pratt?

PL: Yes.

CVE: What did you make of the outcome of that?

PL: I started off with quite a degree of sympathy for Justice Vasta, as was he was at that time. In the sense that I thought he had—if I step back a bit. The commission was triggered because [00:10:02] Justice Vasta, I think, had been summoned to appear before Fitzgerald and he took umbrage at that, and he made an allegation that there was a conspiracy between Tony Fitzgerald, the Chief Justice Sir Dormer Andrews and the Attorney General Paul Clauson, and it seemed to me that while that was rather inappropriate conduct it wasn't unjudicial. But it seemed to me fairly extreme to commence the commission of inquiry in those circumstances. It was a general commission of inquiry, as I recall. I guess the balancing factor is that we were seriously under resourced. We [00:11:02] had a silk with a little experience, a baby silk, that was me, and four juniors, who were in, I think, their first or second year at the Bar. We initially had a single solicitor to assist us. No real means of making inquiries and no very specific allegations to focus on. So my—as I say that sort of balanced, as it were, the breadth of the inquiry. We received a lot of submissions, which we had to look at, track down and try and do things with, and what really led me to be—to think there was a basis for serious allegations against the judge, was the fact that we received from his former accountant [00:12:02] tax returns, and I think also, in fact, I'm fairly confident also, customs declarations relating to the importation of second-hand machinery from Italy, and Justice Vasta had signed the importation documents. A form, in which the value of the machine was declared to be something like two million dollars and on the tax returns, for the purposes of depreciation, a statement that the value was 13 million dollars, and it seemed to me that nobody could conscientiously do that, and it was documentary, it wasn't a question of word against word or anything of that kind. The accountants name from memory was Trevor Maloney, and he was given—he drew these things to the attention of the directors of [00:13:02] the company involved, Costco Holdings, and was given instructions to look no further, and either his appointment was terminated or he resigned. It came—that was some time before the inquiry, but he came forward with this information and it was at that point I thought that there was some real substance in an investigation into Justice Vasta's conduct.

CVE: It was an extraordinary period because there was, you know, forensic examination of what was going on within the Queensland police force as well as the political ranks, and then it reached into the judicial ranks.

PL: Yes, although not directly from—not directly in the Fitzgerald Inquiry, but as it were as a result in the way I've explained.

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CVE: Another very high profile case that you had a part in, in those sort of early [00:14:02] years as Queen's Counsel was the Lionel Murphy appeal for his conviction, I think against perverting the course of justice.

PL: Yes, that's correct.

CVE: Tell us about that one.

PL: I was brought in, I think, only in the High Court. I think it had been to the Court of Appeal in New South—well I'm not sure about that, I think I appeared in New South Wales at one stage too. But I was certainly involved in the High Court proceedings, and it was kind of exciting for, you know, a relatively junior barrister to be involved, and interesting. I focused—there were really two issues in the case. One involved the question whether a magistrate was a judicial officer. I think that was the question. So whether an attempt to influence him when [00:15:02] conducting a committal proceeding was a part of the course of justice or an administrative act. Because the magistrate doesn't make findings and so forth, and that was what I had to focus on. The other, I don't remember as well because it wasn't what I had to focus on, but it was a matter of criminal procedure. It was on the other point that Justice Murphy was successful in the High Court. I better think about that. I know we won the constitutional point of the question about the status of the magistrate. I'm not sure whether there was a remitter to the Court of Appeal, New South Wales Court of Appeal on the other question, or whether the High Court determined it directly and I haven’t refreshed my memory for today's purposes. I'm sorry.

CVE: These were both pretty hefty cases, as you refer to, for a junior silk. What was the significance [00:16:02] for your career? What did you take from that?

PL: Well, I was a bit concerned that I was developing a specialty in dealing with judges who are accused of misconduct, and I didn't think that was a very big field to be working in [laughs] -

CVE: Hopefully not.

PL: - and I was right. It made it a fair difference to me, I think. It was good work to have.By the same token the Judges Commission of Inquiry took me out of action for the best part of a year, maybe a bit less than that, but certainly more than six months and so at a time of transition from practicing as a junior to practicing as a silk, when you're trying to keep your connections with solicitors and get them to continue to brief you as a silk, I was, as it were, cut off from them. In those days it made more of a difference than it would now because we still had [00:17:02] the two counsel rule where a silk couldn't accept a brief unless a junior was briefed with him, and the two-thirds rule, which was that the junior had to be paid two-thirds of the silk’s rate, and those rules were intended to really put a brake on the extent to which Queen's Counsel were engaged for matters. So it was a bit of a barrier, as it were. We needn't debate the rights and wrongs of it, but that was the way it was. So I came back from the commission of inquiry with really no ongoing work. I hadn't been able really to do anything other than work on the commission of inquiry during the period over which it ran, and I was lucky enough to get some work fairly quickly, but I had lost a lot of matters, which I would normally have carried through into my first year as a silk for obvious reasons; people needed things done and I wasn't available. So in a sense, [00:18:02] it was a start again exercise and over time I think my practice

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narrowed more into planning. It wasn't as broad as it had been although I always tried to keep other work.

CVE: In 1989 you became a member of the Bar Council and in the end you served a total of 11 years on the Bar Council. Two terms as vice president, between 1991 and 93, and then 2003 and 2005, and then one term as its leader, between 2005 and 2006. How did the Bar change over that period and what kind of leadership did you bring to it?

PL: I think the change that I ended up being most supportive of was the introduction of compulsory professional development requirements. When I started [00:19:03] there was little training for junior barristers and no requirement for people to get any sort of professional training after they commenced at the Bar. There was some interest developing while I was on the Council before we introduced the requirements. For example, it was in that period that Justice Hampel from the Victorian Supreme Court commenced advocacy training or at least we became aware that he'd commenced to provide advocacy training, and I remember a decision was made at a Council meeting that we would have two people go to one of his courses with a view, I think, to them assisting with training of barristers in advocacy work in Queensland. When I was vice president the first time, I undertook one of those courses myself. You're not supposed to be appointed to silk unless [00:20:03] you have special skills in advocacy, but I thought mine could do with some improvement and I found the course very helpful, and I strongly encouraged people to undertake it. So we did a bit to promote that. But more significant was the introduction of the requirements for compulsory professional development, which I think, were about ten hours a year. People balked at it and I myself was initially not a firm believer in it. My view was that if you were in any way diligent at all, when you got a case either you had sufficient experience and knowledge or you went and did the work to prepare yourself, and therefore you were constantly updating your knowledge through the pressures of your practice. I've come to realize that that doesn't always happen, unfortunately. So [00:21:03] Glenn Martin, I give great credit to for pushing the introduction of CPD and once it started and I saw how people were responding and benefiting from attending at courses, even if they were experienced, I became a very strong supporter of it. Not only was it good in terms of the development of and maintenance of professional skills. It was also good in re-enlivening, I guess, a sense of professional community, which as the Bar had grown, had somewhat weakened. So when I started there were maybe 120 or 130 barristers in Queensland. I suspect by the early 1990s, the number was about four or five hundred, I'm not sure, and I think today it's probably [00:22:03] over a thousand, and as the Bar expands people move into different buildings, they don't see as much of each other. If people don't practice in the same area, they don't have contact. But by making people come to these courses, there was a lot more interaction, there was a lot of discussion, issues came up which might not have come up, and it was, I think, very helpful.

CVE: What are some of the other significant changes that you think occurred in terms of training of the barristers in that period?

PL: The introduction of Bar Practice Course was also a pretty significant step. I think that happened somewhere around 2005. I'm not sure when it actually started but it was certainly on foot when I was still on the Council. It may have even been earlier than that. When I started, as I

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[00:23:03] think I mentioned, we got no training at all in advocacy. We were expected to attend half a dozen lectures in the course of our first year and that was all the assistance you got in learning how to do your work as a barrister. It wasn't very useful. I do remember two of the lectures in particular, but it was nowhere near enough. So the Bar Practice Course is now a six week course. Generally, the sessions are conducted by practicing barristers, sometimes with the assistance of judges and retired judges, and it gives people a much better grounding in what is necessary to do your work as a barrister. It's become particularly important because of the contraction of work in court, which has occurred for a number of reasons. But I think that has been a major innovation.

CVE: [00:24:05] You've also had a real interest in the area of mediation.

PL: Yes

CVE: How have you seen that practice evolved over that time?

PL: In the late 80s and early 90s, the government was very concerned about how the legal profession carried on practice, generally. It was concerned about the cost of litigation. It was apparent that we were going to face regulation in a number of ways, and there was a real effort being made to try to reduce the length of trials and what the public had to pay to go to court. The Bar had to decide on a response to what was happening. Mediation started to become [00:25:06] something not entirely unfamiliar on the Australian legal landscape about this time, and we had a choice as to whether we would oppose it or support it. After some consideration we decided strongly to support it. I particularly remember the work of Charles Brabazon who was on the Council with me at that time as one of the individuals most strongly encouraging it. Ian Hanger was not on the Council, but he was another, and through pretty much, from my recollection, their recommendations the Bar decided to support it. What we faced was a mechanism, which if successful, would significantly cut down the amount of time in [00:26:06] court, and time in court is the core work of barristers, but nevertheless we decided it was good to encourage it and we did. We established the bar practice—sorry, the Mediation Centre, we—I'm sure we arranged training courses to be conducted for barristers is so they could become trained and, I think, qualified mediators, and generally supported the use of mediation as a means of reducing the amount of litigation that went to court, which I think was a proactive thing that in a sense, was a bit more forward looking than the response of some other professional bodies in that era. It was very [00:27:06] early in the mediation period.

CVE: It was a period when we're seeing, I guess, some changes in terms of regulation of the legal profession. What are your observations about how things changed in that period, particularly when it comes to disciplinary issues as well?

PL: That's right, Cathy. I don't recall the precise year but I suspect it was about 2003 or 2004 that the legislation regulating the legal profession changed radically with the introduction of the first Legal Profession Act. The major changes from the Bar's point of view were that disciplinary proceedings were no longer handled by the Bar itself, and what seemed like being major change the Bar no longer made its own rules—the Barristers' Rules, which regulate the conduct [00:28:06] of the legal profession. The latter wasn't quite as significant in the end as we thought it might be. That was because, I think, the government came to recognise that a lot of work had

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gone into the development of those rules over many years and that they were generally directed to matters of public interest relating to the way barristers conducted their practices. So the rules in force today, to the extent I have looked at them, seem quite similar to rules that a number of us were involved in drafting at various times before the legislation came into force. The other change I mentioned related to discipline of barristers who have engaged in some form of misconduct. [00:29:07] Until that legislation came into force, the work of investigating any complaint about misconduct was carried out by a committee or a subcommittee of the Bar Council, and I was on that for a number of years and chaired it for some time. We had a number of problems. One was a lack of resources, although I think that's still a problem. But the biggest problem we had was that there was very little we could do about the less serious forms of misconduct. So if somebody engaged in something terrible like the commission of fraud, or something else, we could take the matter to the Supreme Court and apply [00:30:07] to have that person struck off as a barrister, and that happened from time to time. For lesser matters, the only course we could take was to conduct an internal inquiry, and if the complaint was made out, we could reprimand the barrister publicly or privately, but that's not very effective for—and not really an appropriate response to what I might call the intermediate levels of misconduct. So with the legislation, initially there was a tribunal consisting of a Supreme Court judge, a member of the profession, and a lay person, and more recently QCAT, which deals with complaints. The complaint are—the complaints go to the Legal Services Commission initially. Nearly all of them get farmed out to either the Bar Association or the Law Society. I think [00:31:07] that's because the Legal Services Commission doesn't have the resources, and both financial, manpower and skill to do the work properly and so except when—at least it used to be the rule—except when a member of the Council is the subject of the complaint, the complaint gets referred to the—is looked at by the Legal Services Commission but generally it's referred to the Bar Association for investigation, a report goes back and the Legal Services Commissioner decides what is to be done. It is far better - a far better system, although I thought we tried pretty hard to do the job as well as we could. We also sought greater powers and I regret to say the court in those days, which could have done something to assist us by introducing rules of court or something of that kind, was reluctant to do that. I didn't have [00:32:07] discussions with the people responsible for that view so I'm not sure of the reasoning; perhaps it was sound, I don't know, but it was a matter of some regret to us at the Bar. But our initiatives were not successful when we tried to get stronger powers to deal with those classes of case.

CVE: At your swearing-in ceremony for the Supreme Court it was observed that in your leadership roles with the Bar Council that you had, and I quote, a firm hand clad in a velvet glove. Is that a fair characterisation? What did you take from that assessment?

PL: Oh, I was flattered, of course. The more usual quote, not that I think it was used on that occasion, is an iron fist in a velvet, velvet glove and I haven't regarded myself as iron-fisted, but I did take, as I think everybody does, the position pretty seriously and I did try to do my best in it.

CVE: I want to go to the [00:33:07] controversy that led to your resignation as President of the Bar Association. In 2006 your wife, Ann Lyons was appointed to the Queensland Supreme Court and it wasn't without controversy. She was, at that time, only the third solicitor to be sworn in as a Supreme Court judge without first being admitted to the Bar and there was a view amongst some senior barristers that she didn't have the proper qualifications and that the appointment

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was gender-based discrimination. As President of the Bar Association clearly that placed you in a very difficult position.

PL: I was placed in a very difficult position. I guess I ought to go back a little bit, not long in time before the announcement of her appointment. I was consulted about who was to be appointed. I am sure it was several months before [00:34:07] the appointment was announced. There was no suggestion at that—I nominated people from the Bar and the Attorney did not suggest at that time that my wife might be appointed. If she had then I would have withdrawn from the discussions, and have had someone else engage in the consultation process. It was some months before the appointment was announced, and I only learned of it from my wife a short time before its announcement. There was a very strong reaction against the appointment, although by no means universal. I did not—it's customary for the President to speak at the appointment ceremony for every new judge. I didn't do that because I felt it wasn't appropriate for me to do that. [00:35:08] There was a great deal of turmoil, particularly a great deal of hostility within the Council, and it got to a point where I decided that from the Bar's point of view the best way forward was for me to resign.

CVE: It was pointed out at the time that you in fact had some sympathy with, not necessarily around your wife's appointment, but with this view that was held by senior barristers, or a number of senior barristers about the inappropriate appointment of individuals to the courts and inexperienced candidates to the Bench. So it was, it was something that you had expressed a concern about earlier.

PL: Yeah. I don't recall ever expressing a concern about an individual appointment, I don't think I did, but you were right. I, and a number of others, were strongly concerned about the appointment process and about overall [00:36:09] whether the best people—the people best qualified for the positions were being appointed.

CVE: At the swearing-in ceremony for Justice Lyons, you and your sons watch from the public gallery. As you mentioned you decided that it was inappropriate for you to speak. The then Vice President of the Bar Association, Martin Daubney, used the speech to launch what was described at the time as a pretty extraordinary attack on the Queensland Government's handling of judicial appointments. He criticised what he described as the government's occasionally tokenistic consultation process with the Bar when appointing judges. Now, I'm sure you were probably familiar with his views, but did those comments in that setting, in that ceremony take you by surprise?

PL: I recall being somewhat surprised by the tenor of his speech, yes. I don't recall specific details [00:37:09] of the speech. Well, I recall one or two, but not a lot. I don't particularly remember recall that statement though I don't doubt it was made.

CVE: On the 18th of July, which I believe was about a week after the swearing-in ceremony, you wrote a letter to members of the Bar Association concerning those comments by Martin Daubney, do you remember what you said in that letter?

PL: I don't [laughs]. If you have a copy, I'm happy to look at it.

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CVE: No, I don't have a copy with me but certainly reports at that time then talk about a meeting of the Bar Council the following day. In fact the following day in the afternoon you resigned as the President the Bar Association.

PL: I can't confirm the time sequence but it sounds right.

CVE: Did you make that decision to resign or were you pushed?

PL: I made the decision to resign but there was a great deal of opposition within the Council to my continuing [00:38:09] as President.

CVE: In fact the Council that evening passed two resolutions. One reaffirming its support for the comments by Martin Daubney in the speech at your wife's swearing-in ceremony, and two that your letter to members of the Bar Association was written without notice to member of the Bar—members of the Bar Council and the Council rejected any criticism of Daubney as outlined in the letter. Did you feel betrayed by the Council at that point?

PL: I never thought of it in those terms, to be perfectly honest. People had strong views. So no that wasn't how I felt about it. I had a lot of support in the Bar generally, I received a lot of letters and emails supporting my position over that period, but there was also a lot of—[00:39:10] I received many communications from people who were opposed and I figured there was no point in having a war at the Bar over whether I should continue as President or not.

CVE: There was a comment by one observer, who wasn't identified at the time, as describing it as a palace revolt. In hindsight is that a fair assessment?

PL: I don't know whether I would use that description. I've never thought of the Bar Council as a palace, apart from anything else.

CVE: So ultimately, was this damaging to the Bar Association?

PL: I don't know that it was. There was a great deal of discord, as I've already indicated, but that seemed to pass. I remain friendly with—I remained friendly after those events with the people on the Council [00:40:10] and others who expressed opposition to my continuing as president. I simply regarded it as a case where people had strong opposing views. I very much disagree with some of the criticisms made, but having said that, so what?

CVE: Martin Daubney was appointed to the Supreme Court about a year later in 2007, joining Justice Lyons on the Bench, and about 18 months later in February 2009, you were also elevated to the to the Supreme Court. Was there any awkwardness?

PL: Not really, no. Martin Daubney's quite a friendly person and we get on well. I now work with him on the Queensland Civil and Administrative Tribunal.

CVE: And in terms of your own appointment, then, to the Supreme Court Bench. Had it been your ambition to be a judge?

PL: Not [00:41:10] particularly. I very much enjoyed the Bar notwithstanding some of the conflict that came my way at times. I liked the work I did. By 2009 I had developed a pretty strong practice and was very comfortable with the juniors, solicitors and experts that I worked with regularly. I quite liked the nature of my work. My only concern really was that I didn't get

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enough work outside Planning. I would rather have done more but I still had some and I was content to remain at the Bar until I ceased work entirely.

CVE: Had you been approached previously to serve on the Bench?

PL: Yes.

CVE: And why did you hold off until 2009?

PL: The first time [00:42:10] I was a very junior silk. The second time it wasn't—it just didn't suit me to take the appointment at the time.

CVE: As we've talked about your background was in commercial and planning law. How did you find presiding over criminal trials on the Supreme Court?

PL: I found them generally interesting notwithstanding, of course, that much of the conduct is most unattractive and seriously reprehensible. Often there is a story associated with a criminal trial, unlike what you come across in civil trials, which these days are often paper-based and pretty dry. So there was quite a bit of human interest, I guess, in the events [00:43:11] surrounding the crime with which the defendant has been charged.

CVE: You've also got a responsibility to direct a jury. How did you find that?

PL: I was considerably helped by the resources available to judges. There is what's called a bench book, which contains some quite specific legal research relating to each offense and provides sample directions, and that was of great assistance to me particularly in the early days when I did trials. So that was quite helpful. You have the benefit of judges experienced in crime to talk to if you feel the need. I didn't do that very much. I might have done it once or twice over my time on the court, but I was always conscious it was available. So while it is a challenge, [00:44:12] nevertheless, there are resources and, you know, it's not too hard to manage. You also get a bit of assistance from the training course to which all newly appointed judges are sent because part of that course focuses on criminal trials and I was not entirely inexperienced. In my early years at the Bar I'd done some criminal work, mostly summary trials and committals before magistrates, but also a number of trials with juries.

CVE: Looking back on the 8 years that you served on the Supreme Court Bench, what were the notable trials that stuck with you?

PL: It's kind of—it's hard to really identify any as being particularly notable, I guess. Some were more interesting than others.

CVE: You certainly [00:45:12] were involved with a number of trials that garnered great deal of media attention things like the Sica trial. I think you were involved with the pre-trial rulings?

PL: Yeah. I didn't conduct the Sica trial but I did pre-trial rulings for Sica and for Dr Patel. I found that work particularly interesting. I came to it, in a sense, fresh. When I had done criminal trials in the past, there wasn't as much focus on some of the legal issues that are identified today and they were done on they—were dealt with on the run in the course of a criminal trial. We now have a procedure, as you've indicated, for having them heard in advance of the trial, often by a judge other than the trial judge, and I did those matters, and a number of others, and I was surprised at how interesting I found that area of the law.

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CVE: Another very high-profile [00:46:12] case was that of the so-called honeymoon killer, the diver Gabe Watson from the US. That was a trial you presided over?

PL: It was a sentence.

CVE: A sentence.

PL: He pleaded guilty to manslaughter and I sentenced him to a period of five years imprisonment —I think with parole eligibility or suspension after a year, which was overturned on appeal.

CVE: What struck you about that case?

PL: Well it was a tragedy, of course, as these cases always are. The deceased person's father was extremely upset and agitated, he was in court during the course of the sentence. The defendant had been charged with murder. He agreed to return voluntarily from the United States to face [00:47:12] court, which I thought was to his credit. He could have been extradited but that can put matters off for years if it's fought hard enough. But instead he returned voluntarily immediately. I thought—so I thought that was to his credit. After the sentence, according to the press the deceased person—the deceased person was his wife as was apparent from your description of the case. The wife's father, I believe from the press, approached the Attorney-General and strongly encouraged an appeal. His view was that in fact, the defendant had murdered his daughter and that seemed to drive much of his conduct. [00:48:12]

CVE: Another case or ruling that attracted quite a bit of attention was in 2013 when you made the decision to declare valid a will, which was composed on an iPhone and to grant probate. Of course, this was sort of in an era where technology starts to make itself known and very present in the courts, isn't it?

PL: Yes. It was novel but it wasn't difficult, from memory. It was, I thought, a conventional application of principles.

CVE: Well that was considered, I think, a landmark ruling.

PL: Well it was the first, yeah.

CVE: Looking back on your time on the Supreme Court, what do you take from that period in your career?

PL: Well although I was very happy at the Bar I was also quite happy on the court and so I was glad I did it. When I first went there one of the things that I found [00:49:12] more pleasant than I expected was my relationship with the other members of the court. Some had been friends from uni days, one I had known since school days. I don't think there was anyone on the court that I'd had any difficulty with, of any lasting significance.

CVE: Well, let me ask you then about the controversy around Tim Carmody—just briefly we will be going into this in more detail in a separate interview. But Tim Carmody was controversially appointed as Chief Justice to the Supreme Court between July 2014 and July '15. So while you were still at the Bench, how would you characterise that period? In broad terms.

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PL: Oh, turbulent. Very stressful for the court. It's no secret, I think, that the court had views about the appropriateness of the appointment, and yet [00:50:14] traditionally the court avoids engaging in public debate about issues of that kind so that made life difficult for us, and the matters which concerned the judges were matters likely to affect us in our everyday work. So that made it particularly difficult.

CVE: You retired from the Supreme Court in November 2016. So I just want to go to a few questions on reflection. It might be considered unusual for a husband and wife to be sitting on the same court Bench, although in Queensland, it doesn't seem to be so unique. How would you characterise that experience of sitting as a Supreme Court judge alongside your wife?

PL: I didn't actually sit alongside her at any time. Judges sit together in the Court of Appeal, but we were never listed together on the same case for obvious reasons. [00:51:14] It's not very sensible to do that. On the—so I didn't really see much of my wife at work. We didn't interact a great deal in relation to our work. But my time at the Bar was a time of fairly intense work and I like many busy professional and other people, didn't have the time with my family that other people are able to manage, and so there was a bit more contact than there had been in other circumstances and that was something I was pleased about. Yeah.

CVE: What kind of judge, would you describe yourself as being?

PL: [00:52:15] Cathy, I can give all sorts of answers to a question like that.

[Both laugh]

CVE: You can.

PL: I tried to be careful with my work. I tried to be diligent. I tried to be fair. Those were the things I sought to do.

CVE: Much has been made by your peers about your very strong work ethic, and also your strong sense of right and wrong. What was it about being a judge that you enjoyed?

PL: I guess as a judge you don't impose your own views of right and wrong; you work within a legal framework. Boundaries are often apparent, if not strictly fixed by other decisions. So one's sense of right and wrong doesn't play a significant role in how you perform or what judgments you make. I found the work generally interesting. I've spoken about [00:53:15] how criminal trials had human interest. I've always enjoyed researching the law and coming to understand it better, and there was quite a bit of that in the court. I enjoyed the variety of the work. So well, I knew a fair bit about planning law and a reasonable amount about some other areas. I would encounter areas of law that I wasn't quite so familiar with.

CVE: What changes have you observed with the conduct of the courts during your period on the Bench?

PL: With the conduct of the courts? I guess in my early years. I formed the impression rightly or wrongly the judges were more autocratic than they are today. That's not universally true with respect to either period, I guess, but in generally I think it might be said that that's correct. So, that's one thing. [00:54:16] But none of us are perfect. So I guess there's been perhaps a little a little less formality a little less of the complete control of the Court. We try to be better

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organised, I guess, so try to make sure—control cases a bit more to make sure they're ready for trial. I'm not sure I'm actually getting to the gist of your question, Cathy.

CVE: I guess I'm just wondering, you know, we talked about the way things changed for barristers in your leadership period during the time with the Bar Association and how you've seen things evolve then in the courts over your long career.

PL: The volume of civil work as a proportion of all the work has contracted. That's one significant change. There is a lot more criminal work. There is less opportunity for [00:55:16] very junior barristers to get experience in court. That's another significant change with quite challenging implications for the Bar and for young people starting careers as barristers or even solicitor advocates. That's another big change. Yeah, they're the main things about the court itself. There are changes about criminal matters. The trials, particularly the judge's directions at the end of a trial have become—I would describe it as more technical. They were—they seemed to be much simpler in the criminal trials I did when I was young. No doubt learning has developed over a period of 40 years or so that I'm talking about. But those are changes. There is another change I've mentioned [00:56:16] which might not be a direct answer to your question, but I think the way police investigate matters has changed. I think part—that is in a sense a product of greater regulation by legislation of how they conduct investigations, and the way the courts have given effect to that regulation. So I think the police are more careful to record things. There is less reliance on police officers words about what a defendant was alleged to have said, greater consciousness of the need to allow access to the legal representative when a potential defendant or a suspect is being investigated. Those things are changes [00:57:16] of considerable significance, I think, over my time. They're not just a product of what the court has done obviously, but they are there, and I think police officers seem to be better educated than they were in my early years.

CVE: What about changes with the juries? Have you noticed an evolution with juries?

PL: My impression, and it's only a general impression, is that they are not as broadly representative of the community as they used to be. Having said that—and by that I mean people who have busy careers of various kinds less likely to be available for jury work. I think in the old days, my impression, and I don't have any figure—I don't know of any studies to give effect to this, my impression is that in the early days of my career, you were more likely to get [00:58:16] a broader sample of people. Having said that I have had some juries who I thought seemed to be well educated and people with quite interesting backgrounds. I don't really know the details because you don't get much but you get a sense sometimes from the questions the jury poses, from how they react to evidence or whatever, and as a matter of impression that's what I would say.

CVE: We'll leave it there. Thank you so much for your time today.

PL: Thank you, Cathy.

CVE: That concludes part one of this interview with retired Queensland Supreme Court judge, the Honourable Peter Lyons QC. In part two, we'll discuss what's been described as Australia's greatest judicial crisis, certainly Queensland's, the controversial appointment of Tim Carmody as Chief Justice of Queensland.

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SCLQ

End of interview

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