

SUPREME COURT OF THE NORTHERN TERRITORY

STATE SQUARE, DARWIN

CEREMONIAL SITTING TO FAREWELL

THE HONOURABLE THE CHIEF JUSTICE B.F. MARTIN AO MBE

TRANSCRIPT OF PROCEEDINGS

COURTROOM 1, FRIDAY 31 OCTOBER 2003 AT 3:17 PM

PRESIDING JUDGES:

THE HON. THE CHIEF JUSTICE, JUSTICE B.F. MARTIN AO MBE
THE HON. JUSTICE D.N. ANGEL
THE HON. JUSTICE D. MILDREN RFD
THE HON. JUSTICE S.G. THOMAS AM
THE HON. JUSTICE S.R. BAILEY
THE HON. JUSTICE T.J. RILEY
THE HON. ACTING JUSTICE L.J. PRIESTLEY

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ANGEL J: Distinguished guests, fellow members of the legal profession, ladies and gentlemen, boys and girls. In the presence of the Chief Minister, that probably should be girls and boys.

Welcome to the special sitting of the Full Court of the Supreme Court of the Northern Territory to mark the imminent retirement of the Chief Justice who has served on this court since 1987 and as Chief Justice since 1993. The members of the court are very pleased to be joined this afternoon by the Honourable Justice Mansfield of the Federal Court of Australia, the former Chief Justice of this Court The Honourable Austin Asche, the former Justice of this Court The Honourable John Gallop and another former Justice of the Court The Honourable Howard Olney.

Mr Attorney, do you move?

DR TOYNE: Thank you very much. Chief Justice, Your Honours, Your Worships, Mr President, the Chief Minister, distinguished guests, ladies and gentlemen. We are gathered here today at this ceremonial sitting of the Full Court to honour the Chief Justice of the Supreme Court of the Northern Territory on the occasion of his retirement today.

The Chief Justice Brian Martin retires from a career of distinguished public service. It is said he will have left the Northern Territory better off. Brian Martin moved to Alice Springs from Lithgow in 1963 and commenced practice there as a Barrister and Solicitor. Whilst in Alice Springs he became a member and Chairman of the Alice Springs Town Management Board and later, Deputy Mayor and Mayor of Alice Springs Town Council during the period 1972 to 1975.

He was appointed Solicitor-General and relocated to Darwin in 1981. He was appointed Queens Counsel in 1983 and as a Judge of the Supreme Court in September 1987. He became Chief Justice of the Supreme Court of the Northern Territory from March 1993.

Prior to taking up judicial office, Brian Martin was appointed by the Government of the Northern Territory to chair wide ranging public inquiries throughout the Northern Territory, into such diverse matters as pastoral land title and the welfare needs of the Northern Territory.

Form 1980 to 1989 he was a Director of the Australian Bicentennial Authority and Chairman of the Northern Territory Council.

Since his appointment as Chief Justice he has served as Chairman of the Northern Territory Parole Board and been appointed as acting Administrator.

Chief Justice Martin was appointed a Member of the Order of the British Empire in 1982 and as an Officer in the Order of Australia in 1989.

I have said earlier that the Chief Justice will leave the Northern Territory better than he found it. His lengthy service to the law, as private solicitor, Solicitor-General, Judge and Chief Justice and his many contributions to the greater community speak for themselves. His legacy is sound, experienced highly respected court system. It is the cornerstone of the administration of justice. The importance of which I do not need to remind this audience.

The Chief Justice has consistently and fiercely defended the independence of the judiciary and the need to maintain the separation of powers that create the environment that allows us to live safely, freely and in harmony in a healthy dynamic democracy.

Throughout his time as Chief Justice he has demonstrated compassion, balance and justice in the courts of the Northern Territory.

Notwithstanding the normal passionate debates in society about such matters as sentencing, human rights, land rights and many other matters that touched most ordinary Australians, the administration of justice in the Northern Territory is in very good sound state. Our courts enjoy genuine support and respect of the public in general. This is no small measure due to the steady, principled and wise leadership of the Chief Justice over the past ten years.

His Honour is much to reflect on his years of stewardship over the court. He should take great pride in his achievements. We, his friends and colleagues, and the people of the Northern Territory have much to thank him for and to remember. His legacy of sound, mature and highly respected judiciary in the Northern Territory will echo many years into the future.

I can now announce another legacy. The Chief Justice has for some time been expressing his desire that the name of the Office of Courts Administration be changed. I have had discussions with my department over the past few days. I can now announce that the office will be known Court Support Services.

I would like to thank Martin CJ for his many years of private, public, judicial and community service in the Northern Territory and wish him and his wife Lorraine all the best for their retirement.

ANGEL J: Thank you, Doctor Toyne.

Mr President of the Northern Territory Bar Association, do you move?

MR REEVES QC: I do if the court pleases.

As the Attorney has pointed out, Your Honour has been a Judge of this court for a little over 16 years and was Chief Justice for about ten and a half years. During that time much has changed and much has stayed the same.

In 1987, about 16 years, ago when Your Honour was sworn in as a Judge, Mr Manzie addressed this Court as Attorney-General in a CLP Government, Mr Pauling QC addressed the court as President of the Northern Territory Bar Association and Mr Hiley who had that day announced his appointment as one of Her Majesty's Council addressed the court as President of the Northern Territory Law Society. The ceremonial sittings took place in the old Supreme Court building in Mitchell Street.

The other members of the court at that time were Asche CJ and Nader, Kearney, Maurice and Rice JJ with Gallop and Forster JJ as non-resident Judges and Muirhead J as an Acting Judge, having retired sometime before then.

Now, some 16 years on, Doctor Toyne addresses the court as Attorney-General in a Labor Party Government, and that fact alone is probably a stark example of how much things have changed in the past 16 years. Mr Hiley QC has left the Territory and he now resides in a remote area of Australia called Queensland. These sittings are being held in this splendid courthouse, a far cry from the old courthouse that no longer exists. Another example of how much things have changed in the past 16 years.

None of the Judges who sat with Your Honour at your swearing in ceremony in 1987 is still a Judge of this court. Asche CJ as he then was went on to become Administrator of the Northern Territory, and he then retired. At least, that is the word that is very loosely used to describe his present hyperactive lifestyle.

Can I give Your Honour a word of advice, gratuitously; do not ask Austin Asche QC for advice about how to organise a quiet and relaxing time. I regret to say that he stands as a stark example of someone who has failed dismally in that respect.

Sadly, Rice, Forster and Muirhead JJ are no longer with us. Fortunately, all the others who are members of the Bench on that day are with us but they, like Mr Hiley QC have taken the precarious decision, all of them and I must say that I know Your Honour does not intend to follow them, by moving to various remote parts of this country and in the case of Kearney J to New Zealand.

So those are some of the many things that have changed in the past 16 years, but there are things that have not changed. The one thing that I could identify looking at the various addresses made at that sitting 16 years ago, one thing that I could identify not changed was Mr Tom Pauling QC. He is still here, although he is not here today, unfortunately, he is still Solicitor-General and he is still as flamboyant as ever.

Your Honour might recall Mr Pauling's address at your swearing in ceremony, some 16 years ago. He gave a typical Pauling performance touching on the widest possible range of subjects, including horse race callers, the 1961 Melbourne Cup winner Lord Fury, the bar of the old Stuart Arms Hotel in Alice Springs and the drought in Alice Springs during the 1960s when Your Honour arrived there.

He seemed to imply, at least from my reading of the transcript that there was some connections between those last two subjects and Your Honour, but I will not pursue that here.

To demonstrate that nothing has changed, Mr Tom Pauling QC dealt with similar subjects at the sittings in Alice Springs on Wednesday I am told, where he mentioned another Brian Martin who had been fortunate enough to be a part-owner of last Saturday's multi-million dollar Cox Plate winner.

But there are other things that have not changed, Your Honour. Other speakers have mentioned and will mention many of them, so I will restrict myself to just two. The first is Your Honour's support for the Independent Bar in the Northern Territory, that has remained unchanged and steadfast throughout the past 16 years and remains so today. On behalf of the Northern Territory Bar I acknowledge that support and thank you for it.

The second matter that I should mention that has not changed is Your Honour's support for and strong defence of the independence of the judiciary, that remains unchanged. In this respect Your Honour has had to meet many challenges over the past 16 years and particularly over the past few years while you have been Chief Justice, included defending the judiciary against some extraordinary attacks from quite unexpected quarters. Indeed the way in which Your Honour has met those challenges and defended the independence of the judiciary has earned you the title of 'Bull Mastiff', a title that I think Your Honour should be proud of.

So the Northern Territory Bar would like to thank Your Honour for your support over the years and recognise the enormous contributions Your Honour has made to the community, to the law and to this court.

Finally, I should mention that there is of course, one other thing that will remain unchanged for quite some time yet, even after Your Honour leaves the Bench today. Brian Martin will still be the Chief Justice of the Northern Territory.

In conclusion I would like to remind Your Honour of a quote from your address in response ten years ago when you were sworn in as Chief Justice. You said:

Modern day Judges cannot live a quiet life with golf on Wednesdays and long lunches.

Can I say on behalf of the Northern Territory Bar, after four decades of selfless contributions to this community, we hope that Lorraine and yourself enjoy a long and

happy retirement, leading the quiet life, the odd game of golf if you please, a good book and one or two of those long lunches.

ANGEL J: Thank you, Mr Reeves.

Madam President of the Northern Territory Law Society, do you move?

MS SHORT: Thank you, Your Honour.

Your Honour the Chief Justice, Your Honours, Mr Attorney-General, distinguished guests, colleagues, ladies and gentlemen.

I would like to start by mentioning how nice it is that the Chief Justice's family is here on this historic day. His wife Lorraine and their children Janelle who has travelled from Perth to be here today, Tony, Christine and Leanne and their families.

Brian Martin's illustrious legal career has spanned more than 40 years in the Territory. His resume is heavy with highlights including acting as a private solicitor in Alice Springs, five years as the Alice Springs representative on the Law Society Council and time holding the offices of the Secretary of the Northern Territory Department of Law, Solicitor-General, Judge and Chief Justice.

Throughout his career Martin CJ has made a major contribution to the developing the local legal profession. Since he started practicing in the Territory in 1963 the profession has undergone significant changes. Like the transformation of Alice Springs from an isolated town with one law firm to the thriving legal profession we see today.

His extensive contributions to the community have been recognised through his appointment as a Member of the Order of the British Empire and as an officer of the Order of Australia.

The Law Society has enjoyed a close working relationship with the Chief Justice. We have worked together to see the introduction of a streamlined process for civil claims in the Supreme Court. He has assisted with the development and the adoption of the Priestley 12 admission requirements and introduced judicial case management for civil matters.

During his time at the helm of the Northern Territory's judiciary, Martin CJ has worked to open public access to the court system. To help explain sentencing decisions he initiated judgments being published on the Internet. He has generally increased the use of technology in the courts and has laid the groundwork for the electronic lodging of documents in the future. We can largely thank that Martin CJ's leadership for the strong, stable and well respected judiciary that we currently enjoy.

He will be remembered for his staunch defence of judicial independence in the face of controversy and his ongoing efforts to protect the integrity of the legal profession.

There is no question that Martin CJ's significant contribution to the Territory has had a profound and lasting impact on the legal profession. Under his reign the judiciary has achieved significant developments and we look forward to a continuation of his legacy of strong leadership, open access and innovation.

On behalf of the Law Society and the local legal profession, I would like to congratulate Martin CJ on his distinguished career and many achievements. The local profession has greatly benefited from his years of service and wish him and Lorraine a well deserved long and happy retirement.

ANGEL J: Thank you, Ms Short.

Mr Director, do you move?

MR WILD QC: May it please the court, I rise to speak on behalf of the Office of the Director of Public Prosecutions and the prosecution service generally. Your Honours will note that we seem to have monopolised the front row of the public area here in the court and that is something, I think, of a reflection, Your Honour, of the great regard in which you are held by the members of my staff.

Your Honour, I intend to be brief. This is the 11th speech that you will have listened to in the last two days of these fixtures at least and no doubt many others in other settings. I am the 10th speaker, I think, because the Honourable Attorney has had two goes, two bites of the cherry.

Your Honour was prepared to say this as a result of listening to a speech on Wednesday in Alice Springs, you described the speeches in this way:

It is the traditional thing to bring to bear the good on an occasion such as this, a bit like a eulogy rather, except you get to hear it.

Now Your Honour, I have the page reference if you need it. I understand Your Honour will probably not need references from now on.

Your Honour the former Chief Justice has been referred to already by my learned friend Mr Reeves, he would tell you from his knowledge of Julius Caesar, that good is interred in the bones and the evil lives after. In Your Honour's case it is our view that there will be no evil to live after.

Your Honour has been neither a friend nor an enemy to the prosecution service. Your Honour has been in those lovely and unpleasant words that prosecutors hate to hear from Judges when they are dealing with prosecutor's arguments about corroboration acts, 'intractably neutral'.

Your Honour, this is of course as it should be and we have accepted and applauded Your Honour's fairness and firmness in that regard to both sides and we have respected the compassion that you have demonstrated when dealing with offenders and alleged offenders and the way in which you have dealt with the victims of crime that come before you and the impact of the criminal justice system generally on the community.

This has been appreciated by us, Your Honour, as it should be by the whole community. There was a time, Your Honour, when we thought the playing field might be levelled a bit towards the prosecuting service when we acquired the services of Janelle Martin. It was not to be. Every case in which she became involved had to be flicked past immediately because Your Honour insisted with propriety of course that you could not preside over any case in which she was either the junior or the instructor, much less the principle actor.

I might say, Your Honour, that although Janelle has been and was and may be in the future, a very valued member of our team, she was absolutely useless on Sundays. We would say to Janelle, 'Come in on Sunday, Janelle, we have to prepare this case for next week' and she would say, 'No, dad is putting on his Sunday barbecue and I will be there'.

And there is a big clue in that I think, Your Honour, to something which the community knows nothing about and probably it should not. But Your Honour's close connection with your family, if I may speak personally for a moment, Your Honour, has made a very significant contribution to your fellows in the community over a long period of time. The hard work, the long hours and the commitment that all the Judges of this court provide are only possible with encouragement, affection and sacrifices of a loving helpmate. And Your Honour has had that and you are now both entitled to enjoy the rewards of your retirement and the fruits of your joint labours.

Your Honour is a man who has devoted his professional life to the law and to the community and your private life to your family. We trust that you will now have plenty of time to enjoy your family. Our best wishes go to both you and Lorraine in your retirement.

Your Honour pleases.

MARTIN CJ: Your Honours, Mr Attorney, Mr Reeves, Ms Short and Mr Wild, those who have been graciously addressing the court on this occasion. I acknowledge as well the presence of former Judges of the court who have been named, the magistrates of the Territory who are here, the Honourable Justice Mansfield from the Federal Court which as you know visits the Northern Territory very often.

There are also other distinguished members of the wider Territory community including the Chief Minister, the Leader of the Opposition, representatives of the Armed Forces and the Churches, Commissioner of Police and I note recently retired Mr Anictomatis and Mrs Anictomatis in their role as Administrator and his wife as of yesterday.

I was pleased in Alice Springs to be able to acknowledge the presence of Doctor Egan and to be able to indicate that it was a significant pleasure to be able to as a retiring head of the judiciary to welcome an incoming head of the Executive.

I note also the presence of many members of the legal profession; many personal friends and close family members both locally and from elsewhere. I notice my wife Lorraine, our children and their grandchildren and the Full Court.

If you will excuse me if periodically you sense a tremor. These occasions are quite remarkable because of the apparent furious agreement between some of these senior counsels sitting at a Bar table. It is a pretty rare occurrence in my experience. I anticipated you would be kindly in your remarks but that is the form of these occasions. And as I said in Alice Springs and as Mr Wild has reminded me, it is the traditional thing to bring to bear the good on occasions such as this. It is a bit like that eulogy of which he reminded me.

But that which is muttered about and uncomplimentary, as well as being totally untrue, of course, is unsaid. And I must thank you all for that. The generosity of your remarks viewed objectively may be regarded as somewhat of an overestimation but far be it for me to quibble. I can tell you I am much moved by the spirit of it.

You may not be concerned that my usual impassive and modest demeanour will be disturbed. As I have indicated, my wife Lorraine and children are here and it has been their lot for years to make sure that I am not swayed from my normal mien by blandishments, suggestions such as, 'You are not in court now, you know.' 'Your wig's back in chambers, dad' have been quite common in the orderly discourse of quiet domestic discussion in our household.

As for the address given by a Judge to a jury when it comes to matters of law, 'I am the law, I will tell you what it is and you will abide by it', this raises mirth at home.

How can a person be a brick and a tower of strength all at the one time? Well, I think so, Lorraine is. There is much I could say on that subject but it is a private matter and perhaps best left.

While this function is being directed to give special attention to my time on the Bench and my imminent retirement, fact is, this is a special sitting of the Northern Territory Supreme Court. By your attendance you honour the court, and importantly affirm its good standing in the community. That makes me feel good.

During my term as Chief Justice I have striven to testify the court maintains a reputation in the community as the institution upon which it can rely to administer justice according to the law and it is not open to be criticised based upon the perception that it lacks independence or that any of its members are partisan in any respect or that they do not act fairly in the discharge of their judicial duties. Those ends, as I think have been mentioned are only met by a strict adherence to principle.

It has been my privilege for the time being to have been entrusted with the office of Chief Justice and I trust that it has not been diminished. I want to take this opportunity to mention just a few things, some of which have already been referred to in the addresses from the Bar table. A picture of current interest and to review to a small extent the achievements of the court in recent years.

First thing I think to be noted is that Judges do not live in ivory towers. They are not remote from the community as is often suggested. We all live in the real world. We are affected by each and everything that goes on in it. But the proper discharge of the judicial function means that we may not engage in it to a degree which we might wish or might even enjoy, or as some members of the community might expect.

Maintaining impartiality requires that judicial officers remain clear and away from public debate on issues touching upon the discharge of their functions. That is, unless of course, they are sorely pressed. So therein, the Judge is not being aloof or unsympathetic but simply properly detached. It is not to say that we are entirely isolated from the wider world and many Judges are actively involved in the wide range of community activities.

I asked the other Judges of the court if they would give me a list. I was going to read it but it would take far too long. It is astounding the number of things that they do outside the work as a Judge.

The days of the long lunches as I said 16 or 17 years ago and Wednesday afternoon golf have long gone, if they ever existed. To keep up the public expectation of efficiency, new procedures have been developed and new skills have been learned. Some Judges are more successful at it than others, but after all, they are not appointed because of our managerial skills. They must be learned on the job. In the light of changing rules and conditions, circumstances and environment, but with constant regard to the interest of the sundry stakeholders.

The parties to litigation, as you will appreciate, have got different agendas. Their expectations are diametrically opposed to each other as to the wish for outcome of the litigation. It is just not possible to please everyone.

The court is also expected to pay regard to the impact of cost upon litigants. It is a challenge, but we have been adapting to it over the past years, we have been ready to take into account intelligent suggestions for improvement. The Bar and the Law Society and other legal agencies have been most helpful and supportive in that regard.

The overriding consideration in all management systems, as they have come to be called, and in their application to particular matters is the doing of justice as between the parties before you in that particular case and that does not necessarily mean setting speed limits for final disposition as a priority.

The hands on approach of Judges has, I believe, been a significant contributor to cost reduction by engendering settlements in an environment where it is all the cards are on the table. There is now an insistence upon complete disclosure of the evidence with which parties hope to achieve success in their case, in the civil jurisdiction.

That has led a great deal to settlements which are cheaper way and a more satisfactory way of resolving disputes than having to have it dealt with in public in open court. It promotes a win/win situation. And in that, the changes incorporated in this court's procedures and many others, with the support of the legal profession, I think has achieved some significant success.

Then there is technology. The advances that have been made in recent times, which have also been a great contribution to reducing costs and efficiency. With resources provided by Governments of both persuasions, the Territory courts now have access to video conferencing equipment, which enables parties to present their witnesses and even arrange appearances by counsel, from even remote places in Australia, such as Sydney or Adelaide.

We have engaged in that type of hearing involving people in London and New York. But the primary issue of that exercise is who has to lose the customary hours of sleep. The potential use of this cost saving procedure, I do not think has been anywhere near fully developed.

I want to say something about criticism because it is something that is in the air quite often and nobody likes unfair criticism, especially when it is supported by innuendo only and not based on any firm foundation of fact. There are a variety of sources, often piggy-backed one upon the other to bring adverse reflections on the standing of the court or that of a particular member of it.

Judgments sometimes touch on issues which have an interest beyond that of the parties. It is of the very nature of the role of the court that there will be winners and losers upon the finalization of litigation, unless result by negotiation.

Naturally enough the losers or those who feel they are on a losing side will be disappointed. Sometimes they have been involved in public disputation out of court as well as in, and there is a loss of face to them, which can be considerable. The

initial psychological reaction to loss, such as denial and anger comes into play and the messenger, that is the court, becomes the target.

What is overlooked in this sub-editorial headline or the five second grab, is that the court has done what it has a duty to do; that is to apply the law to the facts as they have been found; upon the issues which have been joined by the party and on the evidence which they have produced.

Courts do initiate cases; the parties do that and it is the duty of the court to resolve the dispute. It is in the nature of things that not everybody involved in the case will be pleased with the result and what some people might call a court customer satisfaction survey, you might be surprised to learn that it is not unusual that about half the people are dissatisfied.

We acknowledge that we are open to fair criticism. After all usually diametrically opposed arguments are advanced on behalf of the parties and the trial Judge make up his or her mind as to which of them is to be preferred and to give judgment accordingly. But the appellate courts are there to correct the errors that might be made at the trial stage.

Some people in the community apparently think that making a fuss and enough noise, might cause a Judge to change his or her mind in a like case or other Judges to follow similar suit. To do so would be to abandon judgment to external influence which is the very antithesis of judicial independence and impartiality. The legitimacy of judicial decision making would be lost.

If there is perceived to be a real problem with the law as the court has determined it, then the matter can be taken up and resolved in the Parliament. Amendments to legislation are often sponsored on the basis that the interpretation given by a court has not produced the result which the Government of the day had expected.

The combative nature of political debate here and elsewhere engenders an atmosphere in which like means are employed in order to criticise the judiciary. The incongruity is that Judges are not trained to be combatants. Responses may be considered to be slow and miss the morning edition. Tactics may not be thoughtfully considered, all because a Judge is attending to his or her real job. Our language may not be constructed with a view to the attention grabbing journalistic headlines.

So long as unjustified criticism are likely to continue there will remain the need for the court to have access to a media savvy adviser and public information officer. That is, a qualified person who could act as required in a timely way to respond to unfounded, unfair or incompetent criticism from whatever source and promote the role of the judiciary in society.

In recent times a request that funds be made available to engage such a person has been met with a sympathetic response. I trust the matter will come to fruition

shortly. The problem at the moment is finding a journalist prepared to take on the job.

It is now history but nevertheless it must be said that a particularly unfair attack made on national television had a damaging effect upon my reputation as Chief Justice and ultimately upon the court. It comprised an ABC television nationwide 7:30 Report and the local Statewide program broadcast some time ago now, June 2001. It is not necessary to go into detail. Many of you will recall the tenor of the reports at least and the circumstances in which they were made.

However, now since the subject matter of those broadcasts has not found its way into litigation which was then pending, I feel free to disclose that the ABC has informed me that it did not mean to convey that which it has termed 'a false impression' in the course of those broadcasts and has apologised if it did so.

The Law Council of Australia had picked up on those broadcasts and published an article distributed to lawyers and Judges throughout the nation, commenting on what it perceived to be the adverse affects of that publicity. It also called in question in no uncertain manner the proper administration of justice by the Judges of this court.

Having seen my response it publicly expressed its confidence in my integrity and the judicial system administered by the Judges. Thankfully that is all now behind us. But it is an example of what can happen when critical conjecture is broadcast based on inferences which are plainly supportable on the facts.

The matter that concerns this court all the time relates to the serious criminal cases which we deal with involving accusations against Aboriginal people relating to crimes of violence committed whilst the alleged offender, more often than not the victim and others in the vicinity are drunk. It is a fact of life. It is well documented in the court statistics and recognised by many who are concerned about these things.

The court will continue to have much of its resources devoted to dealing with cases of that nature until the root cause of the offending is overcome. I do not profess to have the answers to all that but what I know is that the court sees the result and is ill equipped to deal with the cause.

Punishment, even punishment by imprisonment for many years, plainly does not act as a deterrent to others. It just goes on and on and on. What is undoubtedly a great personal tragedy often involving death and serious injury to people has almost become mundane. It is a tragedy for all of us.

There has been a noticeable increase in the number of women admitted by the court as legal practitioners. They have significantly outnumbered the men of recent times. This has been reflected in appearances before the court by women, whether it is counsel or as solicitors exercising their right of audience. It is an overdue and welcome development.

There is no good reason, apart from career or lifestyle choices why any female practitioner should not advance through the profession and be appointed to judicial office if qualified and if that is what she desires. After all the Territory boasts that one-sixth of the membership of this court is female, a rate far exceeding any other jurisdiction in Australia.

There are and have been female magistrates, very successful ones at that and serving as of today. However, merit must remain the touchstone for appointment to judicial office and that is a claim which is open to be made by any legal practitioner, male or female, so far as this court is concerned.

The two matters I mentioned, one of them in Alice Springs, or both of them in Alice Springs and one the Attorney has pulled the rug out from right under me. It goes for the gripe I have had for some time about the Office of Courts Administration. Not the people, the name. It just seemed to me to be wrong. I will not say what I said there. All I need to say, Mr Attorney, is that for myself and I think I might speak for some of us, we welcome the announcement you have made about the change of name of that agency.

I was fooling around with it myself as to what might be an appropriate name and I remembered that the Sheriff's Office provides the orderlies, the Registrar keeps good order in the files and both sides of the Register enforce the orders of the court. That led me to think the proposed name might well be Order in the Courts Agency. Now that would allow the economical continuation of the OCA as the abbreviation which would redound of other present matters.

I rather liked the sound of it. The Department of Justice Order in Court Agency as an acronym would then become the DOJOCA. It has got a certain ring about it.

My predominant thought in thinking about the agency however has always been the work undertaken in the Registry and the Sheriff's Offices, particularly by those hardworking and knowledgeable people who have been there for a long time. They are as well the accessible public face of the justice system for those seeking information and direction regarding the court and its procedures.

I also acknowledge the output of those responsible for recording and transcribing the proceedings of the court. Having it available as required is a significant contributor of the administration of justice, although somewhat costly.

Then there are those whose efforts to assist the judicial officers and helping to resolve all kinds of administrative issues at the interface between the executive and judicial functions. They have a sensitive job to do and for the most part it is done sensitively. They do what they can with such resources that are available and within perceived administrative restraints.

But there is another sore point which remains and I really must repeat what I have already said, not only in Alice Springs but on other occasions. There are attempts by the Commonwealth, State and Territory Governments to apply

commercial management techniques to the administration of justice. Performance indicators are the in thing. And an annual report is produced under the auspices of the Commonwealth Productivity Commission purporting to show how each superior court in Australia compares with the others, for example, in the time it takes to finalise cases. Who knows the cost to the public of compiling, producing and comparing the statistics which in the result are frankly quite meaningless.

Court structures, even at the same level, throughout Australia vary significantly. The range of jurisdiction of any court can be quite different to another. The figures is for this court appear to show that we are a bit slack in regard to the percentage of cases disposed of in a given period. But investigation showed that a significant category dealt with here were simply never included in the count. They comprised appeals from lower courts and tribunals. They are numerous, time consuming and are normally dealt with fairly promptly.

Whether the same proposition applies in other jurisdictions I do not know. But what I do know is that the statistics published for this court are incomplete and totally misleading. And in any event, number crunching is not a true reflection of the administration of justice. I am led to wonder what performance indicators are being adopted for indicating the performance of those responsible for performance indicators.

It has been a great delight to all of us to see you here and observe the increasing use of the foyer of this building for public functions having little or nothing to do with the administration of justice. One of them is to follow shortly.

The permanent art display comprises very valuable works acquired over time by gifts and periodic grants from Government, which unfortunately ceased a few years back.

The ceremonial poles directly opposite this courtroom were recently donated to the Northern Territory for permanent display in the foyer of this court by Yolngu of North East Arnhem Land. That was part or their commemoration of the death of Tuckier, a well-known figure in the Territory and indeed Australian legal history, and for the repose of his spirit.

Temporary exhibitions take place here on a regular basis. It is not just the visual, it is the audible as well. We have performances by Chamber Orchestras, the Darwin Symphony Orchestra, the Darwin Choral, Tibetan monks and Savoy operas, they are just part of the outcome of the long standing policy of members of the court to ensure that that magnificent public space is available for public functions. I should add it is reputed to have amongst the best acoustic qualities of any venue available for musical performances in this city.

For many years, the Territory had been well served by the magistracy which throughout the length and breadth of it, both in major communities and bush courts, deal with the vast majority of cases coming before courts. Theirs is no easy job, bearing in mind not only quantity of work which they must deal with but also the

range of it. But the Supreme Court must necessarily from time to time deal with appeals and decisions of magistrates in exercising their various jurisdictions does not reflect badly upon them in any way, notwithstanding that their decisions may be overturned every now and again.

It must be remember that the vast majority of decisions made in that court are not subject to appeal or review. Of those that are, not all are found to have erred in some respect, such as to justify the decision being overturned. I thank them all for their services to the Territory.

The expansion of their jurisdiction by the Parliament demonstrates the confidence with which they are held by the community.

But for me it is a matter concern to note the jurisdiction once in the hands of judicial officers, now being exercised by administrative tribunals which are not necessarily attended by the same safeguards as surround a court. It is a trend which I consider must be carefully watched.

The occasion will not be complete if I fail to record my gratitude to so many who over the years have enabled me to get on with the job of being a Judge and a Chief Justice. It is not possible to mention everyone by name or function but they should not feel overlooked if not recognisable in the following.

Members of the court who have placed their trust in me to deal with difficult issues and have never shirked responsibility for carrying out tasks that I have requested of them.

The Master, who as well as being a member of the court, has taken on additional jurisdiction and together with the Registrar has been responsible for at least the early stages of case flow management, together with Criminal Registrars. And as well they each have a number of statutory responsibilities by virtue of their office.

Members of the legal profession, I sincerely thank you again. I shall not repeat what I have said on other occasions, but to remind everyone of the able assistance that they have given in court and their welcome and friendship as they have given me out of it. It would be said if we lost touch.

Then there are my Associates. Many of them did me the honour recently of joining together to mark my leaving. A lot of them even have nice things to say about it one way or another. Those who served during my term of Chief Justice have had specially significant responsibilities. Trying to put together a calendar for sittings in Darwin and Alice Springs, accommodating the wishes of six Judges, some of whom want to go on leave every now and again, spreading the variety of work as easily as possible is no easy task. And always putting Registry files back together again after they have been in my undisciplined hands for more than a couple of minutes.

I am especially grateful to Sheriff's Officers who lead Judges into the courtroom in this building where they are to sit. The mysteries of locating a particular courtroom on two levels on opposite sides of the building is not one that I have been required to fathom, thankfully. Their concerns for my physical wellbeing and ensuring that more often than not I had to walk the longest possible distance between my chambers and the allocated courtroom, much appreciated all that effort without too much effect.

Then there are those who deserve a special thanks, is secretary, receptionist, personal assistant, typist, executive officer, travel agent, counsellor, pourer of oil on troubled waters and so on. They are all, of course, rolled up in the figure of Margaret Baddington, my secretary for the last 16 years thereabouts. She deserves a long suffering medal.

This object sees the culmination of years of work. It is a video, might seem very mundane to you all, it is called the Jury Induction video. Preparing it all and getting it ready, scripted and so on, was only half the task. We then needed to get resources located whereby it could be produced. It all came to a head early this week, due to a little bit of pressure from a particular quarter and the Russell Crowe lookalike turned up on time and we now have the Jury Induction video. I suspect it will have its world premier here when the Jury Panel next meet in Darwin, although I suspect the Sheriff's Officers have already had a bit of a peek at it.

But I thank those who brought together. It is not a big step for mankind, but it is an important one in a court, most of whose work is dealt with in the criminal justice system before juries, the juries understand being picked at random, off the street, into court, what happens now. Now we have a reliable and consistent instruction as to what it is about.

So in the few years - few years, God wish it were not so - my commission as Chief Justice of the Northern Territory will come to an end. My security card, my car keys and my unused cab charge vouchers have to be handed back. I have almost finished destroying quite a number of my files.

One of the first things many people say after retirement was announced, was 'Where are you going to live?' and the common expectation that many non-indigenous people leave the Territory after a time. It will be our pleasure to stay right here. We have spent 40-odd years in the Territory. We seem to have been accepted as part of the community. We look forward to the prospect of becoming useful in new ways. Leaving all that aside, of course, our family is very important to us and we would like to think they would prefer if we did not move away.

For the time being however, it is going to be nice to get into the 4 x 4 and go. There are many places in the Territory and elsewhere we wish to explore and we will be setting off on that endeavour quite shortly.

In conclusion, I wish the incoming Chief Justice every success in taking over the role and trust that any confusion of identity will be quickly and satisfactorily resolved, for both our sakes.

ANGEL J: Thank you Chief Justice.

Ladies and gentlemen, this special sitting of the Full Court was convened to allow the legal profession to farewell His Honour the Chief Justice. The Judges will do so on another occasion.

It is appropriate that I mention my secretary Joan Bourke, who notwithstanding her other duties made all the arrangements for today's sitting. She did so with her usual aplomb and lack of ostentation. In fact, unnoticed she slipped out of the door only seconds ago to see if the drinks would be ready for you when we retire. I salute her for what she has done for this occasion.

Ladies and gentlemen, that concludes these proceedings and you are invited to join us all for refreshments in the foyer of the court.

ADJOURNED 4:10 PM INDEFINITELY

**SUPREME COURT OF THE NORTHERN TERRITORY
STATE SQUARE, DARWIN**

**CEREMONIAL SITTING TO FAREWELL
THE HONOURABLE THE CHIEF JUSTICE B.F. MARTIN AO MBE**

FRIDAY 31 OCTOBER 2003
3:17 in COURTROOM 1

PRESIDING JUDGES

The Hon. Chief Justice, Justice B.F. Martin AO MBE
The Hon. Justice D.N. Angel
The Hon. Justice D. Mildren RFD
The Hon. Justice S.G. Thomas AM
The Hon. Justice S.R. Bailey
The Hon. Justice T.J. Riley
The Hon. Acting Justice L.J. Priestley

In attendance:

The Hon. Austin Asche AC QC
The Hon. Justice F. Gallop AM RFD QC
The Hon. Howard Olney QC
The Hon. Justice John Mansfield (Federal Court of Australia)

ORDER OF PROCEEDINGS

- Welcome by Hon. Justice D.N. Angel
- Address by the Hon. Dr Peter Toyne MLA
Attorney-General and Minister for Justice
- Address by Mr J. Reeves QC,
President Northern territory Bar Association
- Address by Ms M. Short
President Law Society Northern Territory
- Address by Mr R. Wild QC
Director of Public Prosecutions
- Response by Hon. Chief Justice B.F. Martin AO MBE

**SUPREME COURT OF THE NORTHERN TERRITORY
STATE SQUARE, DARWIN**

**CEREMONIAL SITTING TO FAREWELL
THE HONOURABLE THE CHIEF JUSTICE B.F. MARTIN AO MBE**

**FRIDAY 31 OCTOBER 2003
3:17 in COURTROOM 1**

- 3:15 PM 1. The Master)
A/Sheriff) take up position
Hon. Justice Angel's Associate) in front of the
Ms Hannah Roe) Bench
- 3:15 pm 2. A number of Sheriff's Officers move to positions behind the Bench to assist with Judges' chairs when required.
- 3:17 pm 3. Sheriff's Officer on indication from Judges' Lobby, announces
"SILENCE. ALL STAND PLEASE AND REMAIN STANDING."
- 3:17 pm 4. Chief Justice, Judges, Justice Mansfield of the Federal Court of Australia, Messrs Asche QC, Gallop QC and Olney QC file in and take their seats. Sheriff's Officers will withdraw as they are seated. Angel J will indicate to the Sheriff's Officer when the formal opening is to commence.
5. Sheriff's Officer announces:
"ALL PERSONS HAVING ANY BUSINESS BEFORE THIS HONOURABLE SUPREME COURT OF THE NORTHERN TERRITORY NOW DRAW NIGH, GIVE YOUR ATTENDANCE AND YOU SHALL BE HEARD - GOD SAVE THE QUEEN."
then
"BE SEATED PLEASE."

6. Angel J's Associate, on indication from Angel J:
"FAREWELL TO THE HONOURABLE THE CHIEF JUSTICE BRIAN MARTIN."
 7. Angel J Welcome.
 8. Angel J invites the Attorney-General to speak:
"MR ATTORNEY - DO YOU MOVE?"
 9. Angel J invites the President, NT Bar Association, to speak:
"MR PRESIDENT OF THE NT BAR ASSOCIATION - DO YOU MOVE?"
 10. Angel J invites the President, Law Society NT, to speak:
"MADAME PRESIDENT OF THE NT LAW SOCIETY - DO YOU MOVE?"
 11. Angel J invites the Director of Public Prosecutions, to speak:
"MR DIRECTOR - DO YOU MOVE?"
 12. MARTIN CJ will then respond.
 13. On conclusion of Martin CJ's reply, Angel J will inform those present that this sitting has been called to allow the local profession to farewell His Honour and that the Judges themselves will do so on another occasion. Angel J will then invite everyone to join the Judges for refreshments in the foyer of the Court.
 14. Angel J will then say:
"THE COURT WILL NOW ADJOURN."
 15. Sheriff's Officer announces:
"SILENCE - ALL STAND
THIS HONOURABLE COURT STANDS ADJOURNED
GOD SAVE THE QUEEN."
 16. All retire.
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