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SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING
ON THE OCCASION
OF
THE RETIREMENT OF
THE HONOURABLE CHIEF JUSTICE K.J.A. ASCHE

AT
DARWIN
FRIDAY 26 FEBRUARY 1993

THE ASSOCIATE: The court's Farewell to His Honour Chief Justice, Justice Asche.

GALLOP J: Mr Attorney, do you move?

MR STONE: If the court pleases.

I appear on behalf of the Northern Territory Government, the Chief Minister, and Members of Cabinet are present to mark Your Honour's retirement.

When I set about the task of preparing my address to farewell Your Honour today I canvassed various transcripts that included: welcomes to this court on 14 April 1986; your subsequent appointment as Chief Justice a year later; and before that, as the first judge of the Family Court of Australia in Victoria in 1976; and, subsequently, as the Acting Chief Judge of that court in 1985.

As I made my way through much of this information I was struck by the professional relationship that we have shared for almost 20 years. At the same time as I was Registrar of the State College of Victoria Institute of Catholic Education you served as a member of the council and later Chairman of the State College of Victoria, Frankston.

You later went on to become a member of the senate of the State College of Victoria in 1973 and was subsequently elected Deputy President in 1978 through to 1979.

In the interim I had left education and the State College of Victoria to read law. On your departure, in 1979, you went on to chair the Victorian Inquiry into teacher education. I subsequently worked for you as a research officer to that inquiry to supplement my then meagre income as a law student.

Our paths crossed again when, on my graduation, I was appointed associate to Sir Edward Woodward OBE in the Federal Court. At the time, to supplement my modest income as a judge's associate, I held the appointment of Deputy Warden of International House in the University of Melbourne and I recall that both yourself and Doctor Asche were strong supporters of that college. That support, of course, was consistent with your earlier and ongoing involvement in post-secondary education: your subsequent appointment as President of the Royal Melbourne Institute of Technology in 1981 through to 1983; your appointment as Chancellor of Deacon University from 1983 to 1987; and, more importantly, later, as Chairman of the University College of the Northern Territory from 1986 to 1988; then, ultimately, as Chancellor of our own Northern Territory University since 1989.

As a junior barrister I appeared before you from time to time in your capacity as a member of the Family Court of Australia in Melbourne. In your time with that court you not only served as a member of the Family Law Council from 1976 to 1979, as presidential member of the Institute of Family Studies from 1980 to 1986, you were also Chairman of the Family Law Council Committee which reported to the Commonwealth Attorney-General in 1985 on Creating Children. This report advocated uniform approaches in reproductive technology.

In 1985 we parted company briefly. I decided to make Australia's Northern Territory my permanent home and moved with my wife, Josephine, to Alice Springs. Unbeknown to me over those previous years Your Honour was a Territorian. You had lived here as a child and you had later served here with the RAAF in 1944-45.

You were subsequently to return home in 1986. I was interested to learn that your father had been the Crown Law Officer in Darwin for 12 years and that you had spent your formative years here; educated at Darwin Primary School, where I'm told you acquired the nickname 'Oscar'. I'm pleased to advise Your Honour that it was my predecessor, Tom Harris, that closed your old school, not me.

I then found myself appearing before Your Honour as a member of this Bench. You were a regular visitor to Central Australia and you were soon to develop a warm and encouraging rapport with local practitioners in Alice Springs.

By this stage Your Honour had been thoroughly upstaged by Doctor Val Asche, a pre-eminent medical scientist in her own right who was pushing back the frontier of medical research at the Menzies School of Health Research. Can I say, Your Honour, how pleased I am to learn that Doctor Asche will continue with her work. Not to be outdone, Your Honour was pre-eminent in helping to carve out a university for Territorians.

On my subsequent election to the Legislative Assembly in October 1990 and my appointment to Cabinet shortly thereafter, our professional association continued. As Minister responsible for the Northern Territory University that relationship had almost come full circle.

Your Honour will recall that I had some remarks to make during a graduation ceremony at the Northern Territory University over which you presided as Chancellor. I meant those remarks most sincerely and record here again the appreciation of all Territorians for the outstanding contribution that you have made to our own Northern Territory University. That contribution was acknowledged last night at a function hosted by the university to mark your retirement as Chancellor.

My appointment as Attorney-General now brings me before Your Honour to farewell you from one of the most important and onerous positions that any man or woman can be appointed to in the land. You, of course, came to the law with an impeccable background; foremost, you had the example of your late father. Both your great grandfathers had law degrees, Thomas Asche from Norway and George Zickie Woinarski from Hungary.

But your father was not alone in his example, your mother was Woinarski and her uncle and cousin were county court judges in Victoria and your cousin, Brin(?) Woinarski QC is a member of the Victorian Bar.

As a graduate of Melbourne Law School you were subsequently awarded a Master of Laws to compliment your Batchelor of Arts. You completed your Articles with Smith & Emerton, with Master Solicitor Dick Homer, later to become Sir Rupert Homer, Premier of the State of Victoria.

Your Honour had one aborted attempt to flea north and having gone to the Queensland Bar and read with Graham, later Mr Hart J. You were later to return to Melbourne in 1954 and read with George, later Sir George Lush J. Lush, of course, had a number of distinguished readers including Patterson, Holt, Reid, McGarvey, to whom Colin McDonald has served as an associate, Sullivan and Jock Felthum(?).

Your Honour maintained a varied practice at the Victorian Bar and took silk in 1972. Indeed, I understand that Your Honour was involved in one of the first kidnapping cases that ever came before the courts in Victoria.

When you canvass Your Honour's achievements they are many. You have already been recognised in many different forums for your great contribution to the community at large. The Honorary Doctorate of Literature marks your contribution to Deacon University as Chancellor. It's worth noting that Sir George Lush was Chancellor of Monash University and Mr McGarvey J was Chancellor of Latrobe University concurrently with your own Chancellorship.

There is a view that the Lush camp had been angling for the Melbourne Chancellorship to completely dominate the Victorian universities but that was frustrated when Sir Edward Wood cut you off at the pass. However, McGarvey did go on to become the Governor of Victoria but you have the more important position of Administrator of Australia's Northern Territory.

Your Honour has been accorded the ultimate accolade in education. You have been made a Fellow of the Australian College of Education and the buntine(?) oration that you delivered last year has been recorded as one of the finest in living memory. That is not to say that you are not without some idiosyncrasies. I find it very frustrating, at times, talking to Your Honour socially only to have you disperse quotes from Kipling, Dickens, Gilbert & Sullivan. I can cope with the Banjo Patterson because that was mandatory reading when I was educated by the Christian Brothers but I understand that the Solicitor-General proposes to deal with you in relation to this matter later.

You remain a fanatical tennis player and it was for that purpose that we employed Professor Don Watts in the Territory. We are a little concerned that with the establishment of the Darwin Rowing Club that you will attempt to relive your youth and past glories of being a member of an eight which won the Head of the Brisbane River.

In any event, one distinguishing characteristic is your capacity to make up your mind quickly. That is a commendable attribute for any judge or vice-regal representative. That capacity to make up your mind quickly was most evident when you proposed marriage to Val on the second day of meeting her. She told me that. How lucky you've been to have such a wonderful woman by your side all these years. They talk about judges being ornaments to the Bench and what an ornament Doctor Val Asche has become to the Northern Territory community.

Your Honour, I look forward to working with you in the Executive Council. We have already had the pleasure of Your Honour as Deputy Administrator and as Acting Administrator and I'm confident that Your Honour and Doctor Asche will bring to the position a collective wealth of knowledge and a great warmth for which you are renowned.

As Your Honour departs these relatively new but hallowed halls I'm sure that you will reflect upon a lifetime of service to the law and education. I don't doubt that there will be some regrets but you have now been selected to a higher calling and we would look forward to welcoming you in the time ahead.

As the court please.

GALLOP J: Mr Solicitor, do you move?

MR PAULING QC: May it please the court.

Your Honour has, in your many judgments as a member of this court, displayed great legal wisdom, commonsense and a profound appreciation of the sweep of history. You have also shared with us your extraordinary appetite for literature of every kind.

This predilection for bursting into poetry or blank verse, as the Attorney referred, is not confined to judgments, as many in the profession and court staff well know and I have personal reason to dread this rhymers. Out comes a line of his ending in falling or stalling or recalling and, 'oh no, will it be followed with 'the hapless Hiley', 'the petulant Pauling'? Or even worse, 'the illerative appalling Pauling'? This literary bent has amused and entertained. It has, perhaps, informed as we shall later see.

But, Your Honour, your classical learning has also lead to errors of judgment, I regret to say, as when Your Honour wagered \$10 with my wife that Falstaff was not a character in the Merry Wives of Windsor. You were not to know that she remembered David Gulpilil, the actor, as Corporal Nimm cracking the audience up by saying, 'That Balstap, he lub your wipe. I tell you the true'.

But not content with literature you took up singing. The trio of Asche, Nader and Rice in a bar in Bali may not have been the three tenors but I disassociate myself entirely from the comment that it wasn't even the full quid.

However, it is your judicial career we are here to celebrate; your move across the road will not protect you from extra judicial tales. In your judgments I have found references to or quotations from Virgil, Ovid, Milton and Sarki, to Shakespeare and W S Gilbert of Savoy Opera fame and have these references shone light on legal issues, we shall see.

There was the celebrated case of Pregelj and Warrimara. As far as I can tell it was the first case that Your Honour gave judgment in that had literary references. An amorous couple in a northern suburbs house gave, at night, full expression to their, well, natural feelings. The curtains, unfortunately, were not hanging; they were on the floor. The light was on. An off-duty police officer, espied them through the window. They were charged and convicted of offensive behaviour.

They appealed to this court, to Justice Asche. In comes not only the sweep of history, the full story of the change in social mores or morays over the ages, but some clues to His Honour's tastes in literature. Who of us here has read Aubrey's, 'Brief Lives'? Well His Honour has. In it is something, and I kid you not, called 'the swisserswasser incident'. It involves Sir Walter Raleigh doing something in a public place. His Honour does not say what. His Honour does say he would undoubtedly have been guilty of offensive or indecent behaviour, even in our so-called permissive society. The mind boggles.

He moves, however, to safer ground with Shakespeare. First he writes, 'It is true that behaviour is not necessarily offensive because it offends a particular person. The variety of personal idiosyncrasies are such that otherwise it would hardly be possible to walk down the street without committing some offence against a sensitive individual'.

Then he proceeds, and I read the punctuation:

"Shakespeare recognised this when he had Shylock say: 'Some men there are love not the gaping pig. Some that are mad if they behold a cat' (having some Scottish ancestry I indignantly refuse to read the next two lines)".

Am I enlightened; no, I'm intrigued. The next two lines are:

And others, when the bagpipe sings ee the nose
cannot contain their urine.

Julius Caesar was warned by the soothsayer, 'Beware the ides of March'. Your Honour, in sooth I say to you, Beware the Caledonian Pipe Band!

May I conclude with two lines from a Gilbert & Sullivan opera with which you are familiar. You have my consent, Your Honour, and I'm sure the endorsement of everyone here, that while your commission as a judge continues you may sing these two lines without any embarrassment whatsoever, 'I am a judge and a good judge too'.

May it please the court.

GALLOP J: Mr Hiley, do you move?

MR HILEY QC: If the court pleases.

On behalf of the Northern Territory Bar Association I'm pleased to attend and to speak on the occasion of this important day in Your Honour's career and in the future of the Northern Territory.

Contrary to the perception sometimes suggested of the judicial, in particular, and of the legal profession in general, Your Honour has gone out of your way to ensure a thorough understanding of the needs and the circumstances of the man, woman and child in the street. Yesterday's newspapers, for example, depicted Your Honour dressed as the Chief Scout. I have seen Your Honour strolling around Casuarina Shopping Centre dressed in true, proper Territory dress; T-shirt, stubbies and thongs.

Your Honour has presided over mock trials conducted at high schools during Law Week, giving school children a far better understanding of the legal system and an opportunity to meet the only Northern Territory Chief Justice in captivity.

Your Honour's involvement firstly with the University College and since its commencement the Northern Territory University, has kept you Your Honour with that growing sector of this community. Your Honour has attended and participated in numerous other walks of life; as a guest speaker, as a mere invitee or simply as an interested bystander.

The work of your wife, Doctor Val Asche, has no doubt kept you in touch with yet another segment of the community. Your Honour has also kept in close contact with the legal profession; a profession which, at times, is quick to complain and slow to compliment.

As soon as Your Honour was appointed Chief Justice you set-up a process of regular liaison with the practicing profession. Your Honour did this by having regular meetings with one or more representatives of the Law Society and of the Bar Association. Those meetings enable full and frank discussion between the judiciary and the legal profession about matters of concern, or just about the system generally. This insistence of yours upon keeping in touch with the real world has stood you well in the performance of your functions as a judge. It will continue to ensure that, like your predecessors, you will, as Administrator, continue to have proper regard to the needs and rights of every single Territorian.

Your Honour's achievements in the law have been significant and the Attorney has already addressed on those. After practicing at the Bar for some 17 or 18 years Your Honour was appointed one of Her Majesty's counsel in 1972. You were then appointed to the Family Court, becoming Acting Chief Judge. In 1986 Your Honour was appointed as a judge of this Supreme Court and since 1987 you have been our Chief Justice.

It is a pity, and I sometimes wonder why, that a person who has been a judge no longer retains that title after his retirement. At least Your Honour will retain recognition of your commission as Queen's Counsel, notwithstanding moves to cease the practice of appointing anymore silks in New South Wales and in the Northern Territory.

As was the case with your predecessor, James Muirhead QC, we will have to get used to seeing and hearing Your Honour referred to as Austin Asche QC instead of The Honourable Chief Justice Asche. The fact that your name description will change as of midnight tonight, almost pumpkin like, will not mean that the new shoe will not fit. Indeed, Your Honour's experience and qualities will enable you to fill the Administrator's shoes more than adequately when you get up tomorrow morning.

In addition to a change of name Your Honour's duties as Administrator will undergo significant change during the period of your office. With the Prime Minister's talk of republicanism by 2001 and the Chief Minister's proposal to legislate against the appointment of anymore Queen's Counsel the function of Administrator, as Her Majesty's representative in the Northern Territory, will change considerably.

Whatever the future does hold for your office and for Your Honour, the Northern Territory Bar Association congratulates you upon your achievement within the judicial system and fares you well in your new role as Administrator of the Northern Territory.

If the court pleases.

GALLOP J: Mr Henwood, do you move?

MR HENWOOD: May it please the court.

I rise on behalf of the Law Society of the Northern Territory and on behalf of all practitioners to express our regret at Your Honour's retirement from the Bench and from the profession and to wish Your Honour and Doctor Asche the very best in your new role as Administrator.

It is, of course, part of the rich tradition on which the legal profession is built, to use occasions such as this to dredge up embarrassing stories from the past and far be it for me to break with such fine traditions.

Your Honour has earned a reputation here in the Northern Territory as something of a show-off, particularly because of the glee displayed when giving judges from other jurisdictions tours of this magnificent supreme court complex. I'm told that this attribute is not of recent origin and has been developed, and indeed tempered, over many years.

Your Honour's former school chums in Victoria attest to a seven year old Austin Asche bragging about an extraordinary ability he had, which he claimed he had learned from Territory Aborigines; namely, the ability to walk barefoot on a bed of hot coals without injury.

As a last hoorah and to commemorate some of Your Honour's other exploits on the Bench, which some might say also had to be seen to be believed, we tried to arrange hot coals on the Milky Way Dreaming so Your Honour could give us a demonstration. Unfortunately the Solicitor-General and your brother Angel with the Supreme Court Art Committee were not to keen on that.

Moving into Government House will be liking going home for Your Honour. I refer, of course, to Your Honour's childhood family home known as Knight's Folly which, I understand, was just down the road or just down the hill from where Government House stands. It was the product of the architect Knight, who designed the courthouse on the Esplanade and the Administrator's office. At that time Your Honour's father, Eric Asche, was the Crown Law Officer in Darwin, a diverse roll which included the unenviable task of being a prosecutor and in charge of legal aid, so far as it existed.

Ironically, during the period of the Asche residency Knight's Folly was razed by fire. We accept, of course, that Your Honour was in no way responsible for that mishap and we trust that Your Honour's new residence will not suffer the same fate.

I might remind the court that Your Honour was admitted to practice in Victoria 43 years ago; that is, in February 1950. Your Honour was admitted in Queensland later and some time later again Your Honour became Master to a number of pupils. Your Honour was a trail-blazer in that role in taking on women as pupils. One of those women was one Molly Kingston, who joined the Victorian Bar in 1962, after practicing as a solicitor in Perth and Melbourne for some 30 years. Sadly, Molly Kingston passed away on Boxing Day last year at the age of 81, after an extraordinary pioneering career.

As referred to by my learned friends, Your Honour was appointed a judge of this court in 1986. The contribution that Your Honour and Doctor Asche have made to the Northern Territory is extraordinary. Indeed, a colleague of mine once remarked that the two of you were a great 'double act' for the Northern Territory, both being eminent in your respective fields.

Your Honour's civic duties are enough to tire an energetic adolescent, and speaking of adolescents, my learned friend Mr Hiley has referred to the most recent addition to Your Honour's list of duties, that of number 1 scout in the Northern Territory.

Your Honour's passions are well-known: the Northern Territory; Your Honour offer refers to it when admitting new practitioners to this court, as the best part of the best country in the world; English literature generally; Australian literature generally, and Douglas Stuart in particular; tennis; and expensive, Cuban cigars. Hopefully the new job will enable Your Honour to indulge those passions. Your Honour also informs me of a desire to write on the law and we look forward to reading the fruits of Your Honour's labours, experience, learning and general love of the law.

I must convey to Your Honour the Law Society's heart-felt thanks for your untiring assistance over the years. Your Honour has always cheerfully assisted when the Society has sought help and has been a great supporter of the Law Society, its activities and Territory practitioners generally. Your Honour has been a regular and extremely popular judge of the Inter School Mock Trial Grand Final and I am delighted that Your Honour has consented to adjudicate this year's final also.

We trust that Your Honour will not lose touch with the Society or the profession and look forward to Your Honour's continued involvement with Society functions and, indeed, to our first invitation to Government House.

Once again, on behalf of the practitioners of this court I wish Your Honour and Doctor Asche well in your role as Administrator of the Northern Territory.

May it please the court.

GALLOP J: Mr Director, do you move?

MR FLANAGAN QC: May it please the court.

Unlike the others I'm not sure who I represent but I rise on behalf of myself and all of the Office of the Director of Public Prosecutions.

Your Honour, the Chief Justice, may recall that at a recent social function I was lamenting the fact that I'm usually the last at the bar table to address the court on such occasions as this and there's very little left to say which has not already been said. On this occasion it seems that I've been upstaged but Your Honour will further recall that I promised you that rather than delve, even more deeply, into Your Honour's background and character, I'd barely stand up, wink at you and say, 'You're a bonza bloke' and sit down.

Having further reflected on that proposition, or perhaps threat, I rejected the course as perhaps inappropriate for such a significant occasion as this.

You may wonder why. Well, firstly, I realise that anyone capable of reciting Banjo Patterson's 'Saltbush Bill' in its entirety, accompanied with full rhetorical flourish, in an excellent establishment actually named 'Yobbos' cannot possibly have any real understanding of the meaning of an expression such as 'bonza bloke'.

Further, I must confess to having seen the photograph of the Full Court which hangs in Your Honour's chambers. Suffice to say it reflects none of the true character of its owner and it might be said to lend new meaning to the concept of a 'full court'. In any event, I could not resist the lawyers temptation to amplify his case by adding a few words.

Many wonderful tributes have already been paid to you today, Your Honour, and more, no doubt, will be paid. They are, of course, unique testimony to your standing and eminence, both as a man and as a judge. For those of us who practiced as a barrister with you in Victoria so many years ago such tributes come as no surprise. You've always been a person who gives unstintingly of your time and self to all of your endeavours, which are many and varied. In your modesty you did not always foresee success but, to the observer, it was well near guaranteed.

At the time of your appointment in 1976 as the first Family Court judge in Victoria the remuneration attaching to that office was not high, as no doubt you, your family, the good Doctor Asche, had good occasion to recall. It's a tribute to your unselfishness and your high sense of public duty that you were prepared to suffer a considerable economic loss, which was well-known to all of your brethren at the bar at the time; a considerable loss of income on acceptance of that appointment.

You were also prepared, of course, to do what you always do; take a risk. You took the risk of sailing into unchartered waters as the Family Court was a new creation and no person could guarantee its future. That the vessel did not flounder was in no small part due to your dedication and your persistence and, of course, your skill as its first mate.

You even managed to arrange to pilot the occasional domestic life raft and sail it all the way to your beloved Darwin on occasions. Indeed, you publicly confessed that you announced to your brother judges from the very start, and I will now use your own words, Your Honour, that you would, 'use every dirty, low down, rotten, sneaky, underhand means to get up to Darwin'. Well, it's probably sufficient if I merely say you fulfilled that promise.

To your task as a judge and as Chief Justice, as to everything which Your Honour does, you brought industry, deep learning and wisdom. You've always exhibited great patience and tolerance. Your friendliness as a courtesy to those appearing before you have been your trademark. You've not been rude, noisy, aggressive or interventionist and yet, you've always remained firmly in control of your court. Gentle words, quiet words are, after all, the most powerful of words. They are more convincing and compelling and more prevailing. Such were the words that we are all constantly able to hear from Your Honour. You have always brought humility, humanity and commonsense to the court. As a judge you have been kind and compassionate and the community can ask for little more. We who have the good fortune of grasping the hand of friendship which has so readily been extended to us, and so often, know that a truer and a kinder and a more gentle man is hard to envisage. We have all been privileged to, in fact, be associated with you.

Your great love of the law, literature and education are well-known and have all been referred to today. Your enthusiasm and your fascination with Darwin, the Territory and its people are, at the minimum, legendary.

On the occasion when you were welcomed to this Bench as its Chief Justice you said, 'To be born an Australian must be the greatest of the gifts of providence; but to live in the Territory must be next'.

Your Honour's faith in the Territory and its future is an example to all of us. It seems to me that we who live in the lucky country are a very fortunate lot on the whole, but we don't seem to realise it at times as we should. Perhaps good news does not sell papers.

Your Honour's love of the Territory is, to those who know you, only exceeded by that for your gracious and charming wife, Doctor Val, and your southern daughter of whom you're so proud.

Your Honour, the time has now come for you to enjoy those loves in greater measure. We all take pride in Your Honour's achievements and the example you've set for us. You have, indeed, been a wise and able judge and in every way an outstanding citizen. Your contributions to the law and to the community are as great as they are varied. We take a special pride in the fact that Her Majesty has seen fit to appoint you as Administrator.

Well, Your Honour has embarked on a long voyage through the law since, as a boy, you first left Darwin. We hope that as you now arrive at the point of disembarkation you have found your travelling companions to have been as co-operative and as congenial as we have found you. It may seem incongruous for some that we meet today to say farewell, when, in reality, you are only moving over the way to what might be described as a not too unfit residence.

So we, who continue our journey, do not say goodbye today but, rather, fare thee well until we meet again. For us our journey continues, happier in the knowledge of having known you. For you, in Milton's words which might well have been written just for, 'Tomorrow to fresh woods and pastures new'. Your Honour, we wish you well.

If the court pleases.

GALLOP J: Mr Gardner, do you move?

MR GARDNER: May it please the court.

Your Honour, the Chief Justice, on behalf of the Attorney-General I wish you farewell from this court and thank Your Honour for Your Honour's significant contribution to it.

Excuse me Your Honour, I have been in Canberra and brought back the dreaded 'southern flu'. A little less than seven years ago, in welcoming Your Honour to the court, I referred to Your Honour's accurate but backward moving timepiece and suggested that an apparent appreciation of the paradoxical might well suit Your Honour in discharging your duties in the Northern Territory. I trust that it has been so.

I also referred to the remarks of Sir Richard Blaxley who, upon leaving the Supreme Court of the Australian Capital Territory, noted that his appointment to this court was, for him, perhaps the greatest single stroke of good fortune which he had had in his life. I then expressed the hope that you could, at the conclusion of Your Honour's service in this court, be able to express a like sentiment.

That notwithstanding, with respect Your Honour, may I observe that this Territory has had the remarkable good fortune to have had Your Honour appointed to this court and that that good fortune, indeed, is to continue for us as Your Honour occupies the high office of Administrator.

Your Honour, a number of allusions have been made this morning to literature. I am loathe to continue making some, particularly in light of remarks attributable to Your Honour back in 1986.

I quote from an article appearing in the august Law Institute Journal of June of that year in relation to poetry. Your Honour is there suggested to have said, 'It's a bloody good thing too, given half a chance I'll recite Patterson at the drop of a hat'.

May I then, with respect, briefly recite Patterson:

Far to the northward there lies a land, a wonderful
land that the winds blow over, and none may fathom
or understand the charm it holds for the restless
rover.

With respect, Your Honour, the Chief Justice, has done more in the last seven years to endeavour to explain to restless rovers the charm that the north land holds.

On behalf of the Attorney-General I thank Your Honour and wish you well as Administrator.

If the court pleases.

GALLOP J: Mr Beaumont, do you move?

MR BEAUMONT QC: May it please the court.

I appear on behalf of the Victorian Bar at the request of Doctor Jessop, the Chairman. If this were not a ceremonial occasion I'd announce my appearance in the old-fashioned way with my learned junior, Mr Watkins, who's also present in court today from Victoria.

The Victorian Bar is appreciative of this opportunity to add to the many tributes which have been paid to Your Honour today. The major part of Your Honour's life has consisted of practice at the Bar and then sitting as a judge, hearing cases conducted by counsel in the majority of cases.

After studying law at the University of Melbourne you were admitted to practice in Victoria firstly on 1 February 1950. Soon after, however, Your Honour fell to the lure of the north and went to Queensland and was admitted to practice in Queensland in February 1951. It remains one of life's mysteries how Your Honour was able to achieve this. Until very recently the path has been littered with practitioners from New South Wales and Victoria who try to be admitted in Queensland but failed to do so. Somehow Your Honour did it.

When Your Honour recommenced practice at the Victorian Bar in 1954 Mr Foley was your clerk. His son, Kevin Foley, continues to practice today as a clerk. At that time there were about 200 at the Victorian Bar and only, I'm not sure whether it was three or four clerks. At the present time there are now more than 1200 people who are constantly in practice and hold chambers on the Bar Roll in Victoria.

Your Honour's chambers, during your early days at the Bar, were in Saxon House where Your Honour shared chambers with other young barristers. It was necessary, at that time, to share due to the chronic shortage of rooms. Your Honour, once again sharing of rooms is now occurring at the Victorian Bar but this time it's because of a surplus rather than a shortage of rooms. Members, particularly junior members, are sharing as a matter of economic necessity. Economies must be made or a decision may be necessary to seek practice at the present time as a barrister.

Your Honour has indicated concern, as Your Honour always does, for young barristers having regard to the present economic circumstances. But the above indicates that the true, individual competitiveness of the profession still exists and it always has existed. Such competition has existed at the Bar since Your Honour's time and Your Honour's support for the Bar over the years, is well-known.

When Owen Dixon Chambers opened Your Honour was one of the first tenants and your room was originally located on the third floor. Subsequently, you moved in order to share secretarial space with Mr Stephen Strauss, who later became Mr Strauss J of the Family Court. As a junior barrister your practice was varied and in addition to matrimonial work included criminal cases and Your Honour acted as a defence counsel in a number of murders.

Your Honour had a number of readers who benefited from your wise counsel and understanding. The Bar records, unfortunately, do not go back far enough to easily ascertain the names of all of your readers, but you did start a trend which is now become an avalanche; that is, the taking of ladies as readers. Two very notable readers were Molly Kingston and Lyn Opas. Both of these readers were very successful practitioners in the area of matrimonial causes. A tribute in part, no doubt, due to their Master.

Your Honour, of course, did not ration your expertise for the sole benefit of your readers and in the best tradition of the Bar Your Honour's door was always open to give advice and help to any barrister who sought advice. I am happy to say that when I read with Mr Jenkinson J, as he now is, I was the recipient of such help on more than one occasion.

Your Honour took silk in 1972 and specialised in matrimonial work when fault was still an issue. When Your Honour became the first judge in Victoria of the Family Court it was that court's gain. Then, ultimately, this honourable court's gain when Your Honour became a judge of this court. One might have thought it was the Bar's loss but that is not correct. The Bar also gained from those appointments as a result of Your Honour's capacity for hard work and your understanding of the problems often faced by counsel in conducting a case.

Seldom, if ever, have litigants left your court muttering that they did not get a fair hearing. No doubt, the case is barristers have thought that you were wrong from time to time, but such thoughts did not stem from any lack of a fair trial. Your Honour has also made interstate practitioners especially welcome in your court.

Bearing in mind the nature of Your Honour's practice at the Bar and then as a Family Court judge, one would naturally expect that stories, whether they be true or not, would abound as to your experiences or exploits. Despite attempts to find stories from such diverse sources as Mr Strauss J, John Bland J of the County Court, a particularly good friend of Your Honour's, your cousin and other senior members of the Victorian Bar it has not been possible to find anything which may be even said to be out of the ordinary or embarrassing as to Your Honour's practice as a barrister. I even checked the records of Barristers' Chambers Limited to see if Your Honour was ever in arrears in respect of your rent. I'm happy to say that this did not occur and Your Honour never received a notice to quit.

It is obvious that Your Honour, during the time of your practice at the Bar, either made many friends who remain true and loyal today; and/or that in the conduct of your successful practice you enjoyed the full confidence and respect of your fellow members. I think it is both.

Your Honour's interest in the Bar has continued since you came to the Northern Territory and I am sure that it will continue after today.

There has been a rumour that Your Honour's interest in legal education led to a meeting between yourself and the Chief Justice of Victoria at the recent judges' meeting. It is said that between the pair of you you had prepared a special course based on ancient Greek law and the teachings of the classical scholars. It has been suggested that this was to be made a mandatory subject in all future readers courses. I understand that the contents of the subject were to be confirmed secretly at the next medico/legal conference to be held in Rhodes in May of this year. Unfortunately, I understand that Your Honour will not be able to attend this conference now as you had planned.

As a result, many young barristers have declared they are very sorry that the course is not yet available and they do not have to take it.

The Victorian Bar congratulates Your Honour on your achievements: one, as a member of counsel; two, as a Family Court judge; three, as a judge of, and then as Chief Justice of, this honourable court. We wish you all the best in your new challenge. We are sure that you will bring to the position all the qualities which you have always shown during your professional life.

If the court pleases.

ASCHE CJ: Mr Attorney, gentlemen, there are two occasions when, by courtesy and tradition, only good things are said of a person; one is at retirement, the other is at funerals. Most recipients, I understand, would prefer the former ceremony. Nevertheless, unless the person concerned is an egotist of the most offensive kind, he must wonder who it is to whom these generous remarks are being directed.

I do not have the self-esteem of Jessel M.R. who was present at a meeting in which it was proposed to deliver an address from all Her Majesty's judges to Queen Victoria beginning with the words, 'Conscious as we are of our manifold defects'. Jessel M.R. strongly objected saying, 'I am not conscious of manifold defects and if I were I should not be fit to sit on the Bench', whereupon Bowen LJ gently suggested that the words be changed to, 'conscious as we are of the manifold defects of each other'. I trust I remain conscious of my own defects after the very kind things said here today.

Fortunately, I have around me a number of effective human antidotes to any swelling of the cranium. My children have, since the age of about five, ceased to regard me as the source of all wisdom. Regrettably, I must tell you that there are many times when I have been delivering some profound observations, which in court would be listened to with at least the appearance of respect, but met at home with repeated cries of 'Rubbish!'. I do not expect any improvement in the future.

Then there is that group of persons ineptly titled 'gentlemen' who play tennis on Saturday afternoon. I have always assumed, though I know of no legal precedent for it, that what is said there must be subject to absolute privilege; otherwise any Saturday afternoon would be productive of some 30 to 40 cases of defamation. No sensitive individual would survive ten minutes and I have no reason to believe that I would gain more respectful treatment after today. Quite the contrary.

I am leaving today because I have been honoured to be asked to be Administrator of this great Territory. For great it is; in area, in people and in potential for the future. That is not to say that it is a land flowing with milk and honey, or an Eldorado where gold can be had for the pickings. It is a harsh country which gives up its treasures grudgingly and only to those prepared to fight for them. It has broken many hopes and dreams in the past and will do so in the future. Its history has been two steps backward for three steps forward; but each time there is that one extra step forward.

Taken in the last 50 year timescale we are immensely more productive than we were and that is a trend which must increase as new technologies give greater means to using the riches of the land. In this context I cannot refrain from mentioning the remarkable progress of our own Northern Territory University which will provide us with the trained scientists and technicians we need.

If it is a harsh land it has its beauty, as those who live here know, and as so many fine artists have attested. Whether it be the great rivers and sea coasts of the north, or the fascinating landscapes of the Centre, there is something which always appeals to the dedicated Territorian.

We are honoured to have here today some of those who have served the Territory so well and for so many years. There are too many to single out individually, but you will recognise them and most of you will know the great things they have done for the Territory. I only mention here my delight in having with us my old and valued friend, Mrs Daisy Ruddick, who many years ago assisted my mother to look after a cheeky, little Darwin boy; and I hope she has forgiven me.

I cannot refrain also from mentioning that wonderful character, Mrs Fitzer, the epitome of a Territorian. She will, I hope, pardon me telling you that she has triumphantly attained the age of 90 but she retains the enthusiasm of a 19 year old.

I am proud to have been asked to represent the Territory and its wide diversity of peoples from all lands, whose children grow to be 'dinkum Aussies' while still retaining a proper pride in their ancestry;— be it English, Chinese, Greek, Indian or so many others. Surely this lovely city of Darwin is a pattern for the Australia of the future.

Naturally, I confess to regret in leaving the law in which I have found so much fascination and challenge. I have shared its endless variety and, like all lawyers, striven to fit the individual case within its confines.

What distinguishes lawyers is that they are consciously aware of the process of precedent and they are aware of that because of the distilled experience of the great legal thinkers of the past that is enshrined in our law books. an enormous variety of human behaviour is there to read in the reports, and fascinating it is to read.

I regret to say that I have wasted many pleasant hours by seeking some particular authority in the old English Reports and noticing, as I turn the pages, some case totally irrelevant to what I am looking for but having such absorbing human interest or intriguing argument that I must necessarily sacrifice valuable time in following it through. Even a random selection yesterday of more modern cases left me with two pleasant items. Lockhart J had to view a television commercial and says:

I have viewed the television commercial several times so that I could fully understand the submissions of the parties. Indeed, I cannot conceive of any other reason for seeing it more than once.

And Deane J when on the Federal Court:

The defendant is alleged to have caused to be published in the journals T.V. Times and New Idea advertisements containing false representations as to goods which it was offering for sale. What was described in the advertisement in the T.V. Times as a 'Giant Wrought-Iron Parisian Cartstand' is alleged to have been of sheet-metal and wire construction with plastic wheels. What was described in the New Idea as being 'a GOLDEN REPLICA OF THE 400 DAY CLOCK which would cause the envious guests to gaze with amazement and intrigue when the counter-balances turn constantly, as they have for countless years, to keep perfect time on the original, unique, masterpieces of craftsmanship' was, so it was alleged, a plastic and metal box which did not operate as a clock at all but, no doubt to the heightened amazement and intrigue of the abovementioned envious guests, played 'Edelweiss'.

What the great judges had in common, and what makes them a joy to read was their mastery of the English language. It remains a salutary exercise; because, if a law, no matter how apparently complex, cannot be made understandable to a body of 12 citizens it is a bad law.

Most of our criminal law and law of evidence achieves that end, but it must be said that parts of it have become far too analytical and need revising. Too much time is spent by trial judges speaking, not to juries but to the Court of Appeal, and dragging in esoteric concepts which bemuse the jury, and sometimes the judge himself, but which some higher court has ordained as necessary. I take the heretical view that juries exercise their commonsense in these cases and neglect the gobbledygook.

I, for one, have enormous faith in the jury system. I regret the demise of the civil jury, for I have yet to be convinced that judges are better fact-finders than jurors and the old system whereby the civil jury found the facts and the judge applied the facts to the law worked well. The preservation of the jury system in criminal law is vital. There are two basic reasons; first, no person should be found guilty of a serious crime without a public consensus; which consensus can only be demonstrated by a random selection of citizens representing the community. Second, the very basis of much of our criminal law is postulated on what a reasonable person would do or not do in certain circumstances.

While I am far from suggesting that judges are not reasonable persons, it is surely better for community acceptance that such a question is answered by the community itself through the medium of the juries. Of course it can be put that juries are sometimes wrong; but so are judges.

In my career I have had the great good fortune to have shared in the camaraderie of the Queensland Bar and the Victorian Bar and I treasure those memories. For much law is learnt by discussion over the coffee-table, and better still, great friendships are formed.

It is one's friends who share the delight in victory or commiserate in defeat. Although, sometimes, the friends can be Job's comforters. One barrister who had suffered some disaster in court was relating his woes to what he believed to be a sympathetic audience. He was greatly cheered when Don Campbell QC, one of the great characters of the Victorian Bar, said, 'Don't worry, it happens to all of us'. The wounded barrister began to feel a little better but then Don said, reflectively, in front of everybody, 'Mind you, I've never heard it as bad as that before'.

I once had a junior brief to the great Don Casey of Queensland fame. I know he arranged it for me because he could see I was having a struggle in my first year at the Bar. Forty years on I again record my gratitude; that is the sort of thing that the Bar does.

When I first came to the Victorian Bar Sir Charles Lowe was still on the Bench. He retired soon after I arrived, although I do not believe the two events are connected. He was a legend. The ideal of a judge of the old school; dignified, courteous and learned. It was said that no judge could be as wise as Sir Charles Lowe looked. A story, no doubt apocryphal;— but apocryphal stories have a habit of suiting the subject. A juror was asking to be excused. His English was not strong and when asked why he wanted to be excused he said, 'Oh, Your Honour, my, my wife is about to conceive a child'. Whereupon the Crown Prosecutor, in that helpful way Crown Prosecutors have, Mr Director, said, 'I think, Your Honour, the witness means his wife is about to give birth to a child'. 'Very well', said His Honour, 'He will be excused. In either case I consider the presence of the husband eminently desirable'.

On another case a witness was giving his name in court and he said he spelled it, P-C-H-Y-C-Z and His Honour said, 'How do you pronounce that?' And the witness said, 'Peaches'. His Honour said, 'Oh; I wonder how you would spell Apricots?'

I have had the pleasure of appearing before many judges, most of whom were excellent, some of whom were only passable and only one or two, at the most, of whom it could be said that they were by temperament or learning, or lack of it, unsuitable. I pay tribute to what they taught me and I hope I have profited by the best examples. Sir George Lush for instance, in many ways the perfect judge, calm, courteous and quick on the issues involved but, rightly, expecting you to do your homework. Then my great ideal, Barber J, an under-rated judge because he had the gift of making the issues so simple that the case looked far less complicated than it was. He was humane, tolerant, good humoured and a joy to appear before. I honour his memory and that of so many others. The law is a great life when you meet such people.

I have also had the excitement, as some of you have mentioned, in the formation of a new court; and because it was a federal court I had the pleasure of travelling to all the capital cities of Australia; each one of which has its own unique attraction.

Finally, I had the enormous satisfaction of coming home; and joining the Supreme Court of the Northern Territory. So far as this court is concerned that satisfaction has been enhanced by the friendliness and help of my colleagues on the Bench. I owe them an immense debt of gratitude. To say merely that they are all hardworking, conscientious and able is to understate. They have never failed to give me every assistance, and cheerfully at that, so my work as Chief Justice has been easy.

I include in my thanks those additional judges of great repute throughout Australia who have generously shared their time and reputation with this court and enhanced its standing. It is a great pleasure to have with us today Gallop, Morling and Priestley JJ and I am most honoured by their attendance.

Morling J, indeed, has paid us a special compliment, for while he has retired from the Federal Court, he has expressed his willingness to remain one of us, and we look forward to his assistance from time to time, as his many other important duties may permit.

Mr Attorney, I thank you for the interest and goodwill you have already shown us and I would like to include in that my thanks to your predecessor, the Honourable Darryl Manzie, who untiringly worked for the court and from whom I have ever had the most friendly and helpful co-operation.

There are so many people I wish to thank. I hope that they will understand that I must necessarily be brief lest I trespass on the time of all present. But the brevity of reference is in inverse proportion to the gratitude I feel towards them. If there is any I miss I ask them to forgive me because of time constraints: to our revered Master, Phil Lefevre, who so competently grapples with so many difficult points of procedure and regulation of the profession; to our highly competent Chief Executive Officer, Alan Dawson, who has taken so much of the administrative burden; to our Registrar who has to deal with the extraordinary difficulties of listings and filings and seeing that the judge receives the papers in proper order; to our erudite librarian who can find in a flash that volume which you have described to her as, 'that thing on Torts by whatsisname; to the reporters who have to translate judicial mumbles into something intelligible; to the associates who have to put up with judicial temperaments and pretend that this is the first and not the fifth time they have heard that fascinating judicial reminiscence; to our fine Sheriff and our ever cheerful orderlies, or should I say Sheriff's Officers, who get us there in time and keep order in the court; to all the staff of the court I can only say how splendidly you represent the warm and friendly city we live in.

With my retirement as Chief Justice comes necessarily my retirement as Chairman of the Parole Board. I have found my duties there considerably lightened by my fellow members of the Board who ever give such careful attention in our monthly meetings; and I repeat the admiration I have frequently expressed to the Parole Officers of their reports: thorough reports which give us a clear picture of the potential or lack of it of every candidate for parole. We are all well aware of the considerable time and trouble it takes to prepare those reports.

To Bob Watt, who is a model of a fair and accurate journalist, I extend my thanks for his reporting. No judge should expect to be free from criticism, but he does have a right to be accurately reported, and that is a right which Bob grants us.

To all members of the legal profession, my thanks. It is a great joy to know you and I hope to keep in touch. Law is a fascinating profession but it is also an exacting one. I have told you how thoroughly I have enjoyed the law; but I have had my share of the sleepless nights which come from worrying over whether you have advised the right course or asked or not asked the right questions; and there is no lawyer who could properly be described as such who has not had similar experiences. For the lawyer's duty is to take upon himself his client's burdens. Often these are light and your previous experience tells you what to do. But, sometimes, they are heavy and your sense of duty will be sorely tried. I wish for you all the right answers.

To all my associates who have served me so well, I hope you have learned something, if only from those great lawyers, Shakespeare, Dickens and Banjo Patterson. You can go on to Halsbury later.

To my secretary, Joan Bourke, I really cannot sufficiently express my gratitude. She has coped so amazingly well with everything; consistent phone calls, shocking calligraphy, the draft judgment which must be out tomorrow and the profusion of correspondence. This is all done so calmly and efficiently that had she not kindly agreed to continue as my secretary in my new job I would have considerable doubts about accepting.

To my wife I say little here, for what one says to one's best and most loyal friend can only properly be said in private. She knows.

When I became a judge I had two ambitions; one was to pray a tales. That I finally achieved last year. The other was to hear a particular answer from a witness who had been cross-examined as to credit for some hours and at whom the cross-examining barrister threw the usual last question before sitting down; and it would usually go something like this, 'I put it to you, witness, that the whole of your evidence in the last two hours has been a pack of lies'. The answer I would always have been fascinated to hear would be, 'Yes; as a matter of fact I've been committing blatant perjury all day'. I have never heard that answer. Well, you can't win them all.

Thank you.