

THE SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING
ON THE OCCASION
OF
THE SWEARING-IN OF
THE HONOURABLE JUSTICE D. MILDREN

AT
DARWIN
FRIDAY 28 JUNE 1991

ASCHE CJ: Your Honour the Administrator, Chief Minister, members of the legal profession, and guests, this court opens today to welcome the Honourable Mr Justice Mildren who was this morning sworn in as judge of this court.

Madame Registrar, would you kindly invite Justice Mildren to enter the court?

THE REGISTRAR: If it please Your Honour.

MILDREN J: Your Honour the Chief Justice, I have the honour to announce that I have received a commission from His Honour the Administrator of the Northern Territory of Australia, appointing me to be a judge of this court and I have this day taken the oaths of office and allegiance before His Honour. I present my commission.

ASCHE CJ: Thank you. Master, would you please read the commission.

THE MASTER: "To The Honourable Dean Mildren: Know ye that reposing full trust and confidence in your loyalty, learning, integrity and ability I, James Henry Muirhead, Companion in the General Division of the Order of Australia, one of Her Majesty's Counsel, learned in the law for South Australia, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council of the Northern Territory of Australia, and pursuant to section 32 subsection (1) of the Supreme Court Act 1979, do, by this my commission, appoint you, Dean Mildren, one of Her Majesty's Counsel, learned in the law of the Northern Territory, to be a judge of the Supreme Court of the Northern Territory of Australia from and including the twenty-eighth day of June in the year of Our Lord one thousand nine hundred and ninety-one to have, hold, exercise and enjoy the said office of judge of the Supreme Court of the Northern Territory of Australia, under and subject to the provisions of the Supreme Court Act 1979, as amended from time to time, doing good behaviour with all rights, powers, privileges, advantages and jurisdiction thereto belonging or appertaining. Given under my hand and the public seal of the Northern Territory of Australia on the twenty-seventh day of June in the year of Our Lord one thousand nine hundred and ninety-one. Signed, Administrator of the Northern Territory."

ASCHE CJ: Thank you, Master. Do you move, Mr Attorney General?

MR MANZIE: May it please the court. I appear before this special sittings to welcome the Honourable Dean Mildren QC as a judge of this honourable court. In extending my warmest welcome to Your Honour, I must say that it's most pleasing to note that we've been able to continue the tradition of attracting such fine legal talent to this honourable bench.

It gives our pleasure an added fillip to have been able to draw that talent from our own local profession.

Your Honour, as you take your place amongst your brother judges, you bring with you an esteemed legal background much of which, I'm pleased to say, has been homegrown.

Your Honour's apprenticeship in the legal profession was spent in Adelaide, the place where you were born and raised. After graduating with Bachelor of Arts and Laws from the University of Adelaide in 1966, you articulated for 2 years to one who has found his own place in the Territory's more recent history, James Henry Muirhead QC now, of course, His Honour the Administrator of this Territory.

From junior partner in the firm of Thomson and Company during the period 1970 to 1972, Your Honour became senior partner of Thomson, Mildren and Company in 1972 and moved permanently to the Territory.

In this firm which slowly became known as Mildren and Partners, Your Honour practised as an inhouse counsel for 4 years before deciding to practise at the independent bar from July 1980 until the recent announcement of your appointment as a judge of this court.

During the intervening period, however, you were appointed as one of Her Majesty's counsel for the Northern Territory in November 1983 and later, in 1988, for the state of South Australia.

Since Your Honour arrived in the Territory, you have also served the law and the Territory generally through a range of appointments including those of secretary of the Law Society of the Northern Territory from 1972 to 1973, and president during the periods 1973 to 1975 and 1979 to 1981; vice president of the Northern Territory Bar Association from 1983 to 1987 and, subsequently, president; member of the Law Council of Australia from 1979 to 1981; vice president of the Australian Bar Association from 1989 to 1990; deputy chairman of the Northern Territory Legal Practitioners Complaint Committee 1983 to 1988; member of the Northern Territory Law Review Committee 1979 to 1984; member of the Legal Practitioners Admission Board from 1990 to 1991; and chairman of the Northern Territory Planning Appeals Committee from 1979 to 1985.

Those aspiring to the legal profession have also had the benefit of your legal knowledge and experience through attendance at your lectures on torts and legal history at the Northern Territory University over the past few years.

But law students have not been the only beneficiaries here. The armed forces too have gained from the legal assistance you have provided by way of a commendable record of military service.

After joining the CMF as a legal officer in 1974, you were subsequently appointed as chief legal officer of the 7th military district. In 1980 you were appointed to the rank of Lieutenant Colonel and, in 1986, as defence force magistrate and member of the Judge Advocates Panel. Moreover, since 1990 you have acted as consultant to the Director of Army Legal Services.

Your Honour, earlier today I witnessed the swearing of your judicial oath before His Honour the Administrator. In making the oath you swore to do right to all manner of people according to law without fear or favour, affection or ill-will in carrying out your duties as a judge of the Supreme Court.

With Your Honour's well-known reputation for being fearlessly independent, I can think of no more fitting candidate than yourself to uphold the principles demanded of this high office.

I have no doubt that in the coming years we can expect to see Your Honour's distinctive style making itself felt on this honourable court.

Indeed, we need look no further for an example of Your Honour's inimitable style than to that now famous story of your stately cruise in a Rolls Royce up to the Cambodian refugee camp outside Darwin. Not only had you managed to catch the federal police at the camp by surprise at the unexpected mode of your arrival, I have little doubt that the Cambodians must have felt that their misfortunes were indeed behind them for, surely, they'd come to the land of milk and honey.

Your Honour, on behalf of the Northern Territory Government, I offer congratulations to you and your family on the occasion of this worthy appointment and I wish you the very best for a successful and satisfying judicial career.

ASCHE CJ: Thank you Mr Attorney. Mr Hiley, do you move?

MR HILEY QC: If the court pleases.

The Northern Territory Bar Association congratulates Justice Mildren on his appointment to the Supreme Court bench. As the learned Attorney has just pointed out, Justice Mildren has been an active member of the Bar Association since 1980 and indeed has been its president since December of 1987.

That occurred until about 2 weeks ago, when His Honour handed over to me the duties of the presidency, together with a filing cabinet full of papers, books, correspondence, rules and the like. His Honour also handed me, at the same time, another filing cabinet full of army materials, volumes, journals, papers, correspondence. In fact His Honour has handed to me pretty well everything, except for his briefs and his Rolls Royce.

As the learned Attorney pointed out, His Honour left the amalgam of Thomson, Mildren and Company in July of 1980 to practice independently and exclusively as a barrister. His Honour in fact set up, in July 1980, Darwin's second set of barrister's chambers. His Honour operated from the Star Village complex and His Honour's bar was known as the "Star Bar" or sometimes as Star Chambers.

His Honour then joined the rest of us as Counsels Chambers, now known as William Forster Chambers in January of 1982. Upon appointment of Michael Maurice QC to the Supreme Court bench, His Honour Justice Mildren took over the running of the chambers and in December of 1987 he inherited the presidency of the Bar Association upon the appointment of Tom Pauling QC as Solicitor-General.

As a barrister His Honour was always meticulous and thorough, he was always reliable, he was always frank, but indinting(?) in advancing the best interests of his client at all times.

His Honour had the uncanny ability to argue his way out of an apparently impossible situation, to make the most of an apparently very weak point and to build up the credit of a client or a witness whose credit appeared to have been in tatters.

As a silk, His Honour had the ability to organise a case, to get the best out of the team under him and to present the case in the best light.

As president of the Bar Association, His Honour has encouraged the Bar Association's involvement in a number of outside spheres, including, as the Attorney pointed out, the Northern Territory University. His Honour in fact instituted the bar prize, which is awarded to a student at the university every year. His Honour has lectured for many, many years, along with several other of the barristers, in subjects, particularly torts and legal history.

His Honour has brought about the association of the Bar Association with Law Asia. His Honour has made numerous public statements particularly concerning the rights of the individual.

I'm sure that we all recall His Honour's vigorous participation in sometimes heated debates in March of 1988, concerning the question of police powers.

His Honour has raised the profile of the Northern Territory legal profession by his participation in such activities and as well by his participation on the Australian Bar Association. His Honour also presided over the Bar Association last year, when the successful Australian Bar Association conference was held in Darwin.

His Honour left the presidency on 18 June of this year, having drafted, and had passed at that very meeting, the constitution of the Northern Territory Bar Association some 11 years after the Bar Association began. And even though it's been talked about for some 11 years, it finally happened at the last meeting under His Honour's presidency.

His Honour has also been extremely active with the Law Society, as the Attorney-General pointed out. Indeed on the second of the 2 terms the learned Attorney referred to, His Honour was elected on the platform of the Law Society engaging its first full time employee, Mr Ted Rowe, and since then the Law Society has gone from strength to strength.

His Honour was also heavily involved in the discussions, again sometimes heated, concerning the introduction of the Northern Territory Criminal Code, during which time and during His Honour's presidency of the Law Society, some 6 or 7 drafts of the Code were considered by committees under His Honour's guidance, and at that time again there was somewhat heated publicity about various aspects of the Code.

His Honour saw the introduction of compulsory professional insurance. His Honour saw the beginning and the end of counsel meetings to be held on Saturday mornings because unfortunately those meetings tended to extend into the afternoons, with the effect that most of us would turn up at 9 am with pre-prepared excuses as to why we had to leave at lunch time.

His Honour also sat as chairman of the Planning Appeals Committee and perhaps that was his first real taste of judicial life as a person sitting on a tribunal hearing submissions from others.

As the learned Attorney pointed out, His Honour has been actively involved in the Australian Army Legal Corp and again has held judicial capacity as a defence force magistrate for the last 5 years or so.

His Honour has also been heavily involved in cricket, both as a batsman and a bowler. His Honour has opened the batting for the privates on most of the occasions when the Law Society has arranged games between the publics and the privates. The suggestion that, consistent with his new appointment, he should relinquish his captaincy of the Darwin C Grade and take up umpiring, is, I don't think, one with which he would agree.

His Honour is also a skilled and accomplished piano player and, as has already been eluded to, is indeed an experienced owner/driver of a Rolls Royce. Indeed the first, and possibly the last, Northern Territory barrister to own one.

In conclusion, the Northern Territory Bar Association welcomes your appointment, not just because you are from one of us, but also because we believe that you will contribute to the Supreme Court bench and to the Court of Appeal the benefit of many years of hard and proficient work at the Northern Territory Bar and heavy involvement with the Northern Territory legal profession.

If the court pleases.

HIS HONOUR: Thank you Mr Hiley. Do you move Mr Bradley?

MR BRADLEY: Thank you, Your Honour.

I have the pleasure of welcoming His Honour to the court on behalf of the Law Society of the Northern Territory. I've known His Honour for 21 years, since the time in 1970 when we both arrived in Darwin. So it is, in some senses, with pleasure but with mixed feelings that I speak today. Pleasure because I am pleased at the appointment that has now been made, but in sorrow in part that the profession, that is that part of it which works on a day to day basis for the benefit of the citizens, will lose his talents. The loss to one part of the profession is the gain to the other.

During the last month or two, it has been, as usual - there has been some considerable scuttlebutt as to who this appointment might be. May I say that there has been almost universally accurate predictions being made by all of the members of the profession to whom I've spoken, and that talk, when turning to these matters, has always been one of universal acceptance of what they thought the appointment might be and of approbation. I think that the profession would join with me when I say that the government and my friend here has got it right.

Your Honour, over the years, has been a difficult customer and a tough one. Difficult to compete with and tough and thorough in the preparation of your work and in the defence of your client's rights.

Your Honour has, I think, universally accepted long suits in independence, integrity, service to the law and thoroughness. Independence in the sense that you show no fear nor favour; integrity in the sense that the profession has total acceptance of the way in which you go about your work; service to the law in the sense of your dedication to the proper conduct of our profession and the way in which you exercised your privileges as a member of it, and thorough in the sense that you have always, in my experience, conducted your own research and inquiry to ensure that the material that I as a humble solicitor sometimes served up to you in a rather messy fashion.

Your Honour's history has already been adequately delineated by previous speakers. Might I merely comment that perhaps Your Honour has departed from accepted legal custom when I hear Mr Hiley say that you drafted the constitution of the bar, I thought that silk only settled such documents. I'm told by Mr Hiley that you started the job as a junior and therefore it was - Your Honour's interests have been known to me as law, and I've spoken about that, cricket, and my friend Mr Hiley has spoken about that, music, and we all acknowledge your competence and interest in that subject and particularly in relation to the piano, and we've all enjoyed your impromptu playing from time to time, and the army, which my friend Mr Hiley has also mentioned. But I might just comment that, as you've indicated to me, yourself, Your Honour, that it is now likely with this honour being given to you, that you will be promoted yet again but to a position of lesser importance.

Your Honour is known for quiet, good humour and the profession accepts that you've always adopted an even tempered and sincere approach to your relationship with members of the profession and that is sincerely appreciated. Perhaps that has been typified by 2 examples: one is told by a now senior junior of his first day in court, when it was found that he was to oppose you, he was, as I understand it, very agitated and unable to sit down, unable to give his attention to the matter ahead.

I'm told that you went up to him very firmly and said to him: "Sit down, take a deep breath, relax, and all will be okay." He took that advice, and indeed I'm told that today he's very appreciative of it.

The second matter which I think typifies your quite good humour to the profession is the way in which you accepted, with great good humour, the presentation of a pineapple, when the same was sent to you anonymously, in relation to one of the very few cases I can ever think that Your Honour may have got it wrong. I'm conscious, however, that the matter is still potentially before an Appeal Court, and I may indeed have to accept the receipt of that said object back.

Your Honour, I offer you my congratulations, the congratulations of the Law Society. I think that you'll find it probably easy to remember the difficulties of the bar having just come from it, and having served ten years, eleven years, there. I ask you, on behalf of the broader profession, to remember too the troubles and problems that solicitors have in the everyday conduct of their side of the profession. Members of the bar, if they're lucky, have 30 or 40 briefs somewhere awaiting their attention at sometime over the next month or 2. Members of the other side of the profession have between 1 and 400 files awaiting their immediate attention.

I'm sure that Your Honour will continue to give that even tempered considerate approach to all of the members of the profession, and we welcome the appointment. Thank you, Your Honour.

ASCHE CJ: Thank you, Mr Bradley. Do you move, Mr Andruszko?

MR ANDRUSZKO: May it please the court. On behalf of the Attorney-General of the Commonwealth of Australia, I offer warmest congratulations to Your Honour upon Your Honour's appointment to the Supreme Court of the Northern Territory of Australia.

Your Honour, I will not repeat that which has been said but will, with respect, adopt it. Your Honour comes to this court with a long and distinguished career in the law in the Northern Territory.

In recent times Your Honour has lectured at the Northern Territory University on the topic of legal history, particularly the legal history of the Northern Territory. In so doing Your Honour has provided a most interesting and entertaining course for the students and, at the same time, has made a most valuable contribution to the knowledge and learning in respect of the Territory's legal institutions and personalities. That course has also given Your Honour the opportunity to conduct careful and extensive research into the lives, times, and achievements of your predecessors on the bench of this court.

At times Your Honour's research has uncovered material which has armed Your Honour with most interesting anecdotes about their, at times, colourful activities. May I most respectfully caution Your Honour against unwittingly providing ammunition of a similar kind to future zealous legal historians. I have no doubt, however, that there will be no difficulty recording Your Honour's achievements in what will no doubt prove to be a long and distinguished career.

In conclusion, the Attorney-General wishes Your Honour best wishes in carrying out the duties of Your Honour's office. May it please the court.

ASCHE CJ: Thank you, Mr Andruszko. Do you move, Mr Director?

MR FLANAGAN QC: May it please the court. Your Honour, I appear for the Crown in this particular case.

Your Honour, the accused in this case really deserves any sentence Your Honour may care to impose on him. Now, the defence have all had their say and they've submitted many glowing things about this particular fellow. I concede that there are those who will say that he adds lustre and colour to the place which he's claimed for himself. But really, Your Honour, the courts got to look at both sides of the ledger and adopt a balanced approach.

Although his prior convictions are not strictly relevant, and shouldn't be used against him, there is some evidence that should be considered. Now when you look at that evidence it suggests that this accused was an unprincipled rorter of the William Forster Chambers refrigerator. And there's worse: conferences with his juniors and clients were so scintillatingly swift and speedy that one had to engage in the most unseemly haste to even keep up with him.

Reference has been made to his skills. Many of them have been referred to. But again, really, a man in his professional position playing the piano publicly, and at lunchtime for the satisfaction of the Goths and Philistines who walk the streets. Well then it was suggested, of course, that he was a most industrious man, but look at the plight to which his industry's reduced him. It was said he was of good character, but one must at least speculate as to why he's endeavouring to disguise his true personality behind the rags in which he's now garbed.

Then again, you see, much was made of his deprived background. But one's got to see that in perspective too. Now, the fact that his oft mentioned Rolls Royce is not the very latest model can hardly be said to make out a case of complete and total deprivation. And look at his associates.

You must forget the company he associates with, and he's unrepentant. He intends to keep on continuing these associations. No, this is not a case where there's any chance of rehabilitation or reform. So what are the other elements of punishment? What of deterrence; specific and general? Well, others before him have committed this same offence for which he now stands indicted, and have been sentenced to long terms of imprisonment, but senior counsel of otherwise impeccable character continue to commit this same offence.

Well then, what about leniency? Your Honour, this is not a case for leniency; not one that calls for it at all. It calls for a special sentence of preventive detention, one which will deter any like-minded offender. Your Honour, then there are all these character witnesses that he brings here. Anybody at short notice can get out there and get together a motley crew like this lot that he's brought here in his aid today. I mean, policemen often speak for accused. The fact that you've got an Acting Commissioner here really shouldn't sway Your Honour. And then after all, the last resort of the true criminal, he brings the church into aid. Not one Bishop, but two. Of course, my friends up that end referred to some sort of scuttlebutt being abroad. It really has to be said that the accused did start the rumour himself, you know. And whilst we're on the subject of these character witnesses, there's a bit of other scuttlebutt around the corridors out there. It's said one at least has come to administer the last rites.

Well there it is, Your Honour, you see our submission is that he should be sentenced for the term of his natural life. However, unfortunately, and quite unmercifully, the statute which prescribes the penalty requires the accused's release at the age of 70 years. Well, as I understand the evidence, he's now 48; if that can be relied upon. In the circumstances, Your Honour should impose the minimum term of 22 years. I might say that the Crown have no objection to him receiving the benefit of remissions for good behaviour. We hope to see a lot of that.

Well there you are, Your Honour, I've made history. I've conducted the first case in Your Honour's court, and I'm very grateful for the opportunity. Your Honour, we welcome you. We wish you much happiness and satisfaction in your new role and we are all assured that you'll be an adornment to this court.

If Your Honour pleases.

ASCHE CJ: Thank you Mr, Director.

Your Honour, I think that calls for a reply of some sort.

MILDREN J: Your Honour the Chief Justice, fellow judges, Your Honour the Administrator, Chief Minister, Mr Attorney-General, Mr Hiley, Mr Flanagan, Mr Andruszko and Mr Bradley, ladies and gentlemen. Firstly, I sincerely thank you all for your attendance here today and for the very kind remarks which have fallen from some of you at the bar table.

I am overwhelmed in fact by the warm welcome that you've given me today. Your words have encouraged me to believe that my future service as a member of this bench will indeed be a long, happy and enjoyable one for me. I also wish to express my thanks for the many letters and personal congratulations that I have received from my many friends at the bar, from amongst the legal profession and also from members of the general public.

The opportunity to serve the community as a judge of this court is both a great honour and a great responsibility, and I will endeavour to discharge my functions to the best of my ability and, I hope, with humility.

I shall bear in mind that my fellow men and women who will be appearing in my court, whether as counsel, solicitors, witnesses, litigants or jurors, all have human frailties, just as I have human frailties. It is because men and women are but imperfect human beings that it is necessary to have laws and judges in the first place, and it is because judges are imperfect that it is necessary to have courts of appeal. Were it otherwise, oh how dull a life we would all be leading.

As a counsel I much admired those judges who resisted the temptation to become too involved in the case. As Lord Justice Denning, as he then was, said in *Jones v The National Coal Board*: "A judge is not a mere umpire to answer the question: 'How's that?' His object, above all, is to find out the truth and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role. Was it not Lord Chancellor Eldon who said in a notable passage that "truth is best discovered by powerful statements on both sides of the question?" And the Master of the Rolls, Lord Green, who explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Green, should himself conduct the examination of witnesses, "he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict." Yes, he must keep his vision unclouded. It is all very well to paint justice blind but she does better without a bandage around her eyes. She should be blind, indeed, to favour or prejudice, but clear to see which way lies the truth: and the less dust there is about the better." And that is compelling advice which I aspire to adhere to.

I received a card yesterday from a member of the profession which contained another piece of good advice which I hope to follow. Written on the card was the following quotation from Socrates: "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially." I think I have now said enough about my ideas as a judge to indicate to you how I feel. In this regard I am creating no new precedent, but merely following the same path as my brother judges have done and the former judges of this court have all done, for as long as I have been in the Northern Territory.

As the new boy I am the last among equals and I have a lot to learn. I know I shall have the benefit of the wisdom of my brother judges, all of whom have always treated me with the greatest kindness. To those about to soon appear before me, I ask not only for your skills as advocates and solicitors, but also for your patience and understanding and wise counselling

Perhaps, too, I should briefly mention that like my brother judges, I share their fundamental belief in the rule of law and in the doctrine of separation of powers. It is sometimes said that judges make laws. They do not. That is the function of parliament. The role of a judge is to discern and administer the law according to the will of the legislature, not to let his idiosyncratic views about the wisdom of a thing distort what the legislators, as the peoples' representatives, have decreed.

On the other hand, the common law, which we have inherited from our English ancestry to the extent that it is unaffected by Acts of Parliament, may be developed by judges by applying the underlying principles of the common law to find new solutions to new problems as they arise. That is a process of the logical application of legal principles, as well as the logical progression and development of those principles.

Finally, I would like to publicly express my sincerest thanks to my wife Elizabeth and to my children Lara, Kirsten and Stuart, for their loyalty, love and support without which I would not be here today. I have been truly blessed with a wonderful family who have always given me great joy and much reason to be proud. I know I have their continuing support in pursuing my new career as a judge.

Whilst there are some things which judges cannot or should not do, for instance become involved in politics, to mention just one, Elizabeth and I hope that my appointment will not change our relationships with our friends and acquaintances in the community beyond that which becomes absolutely necessary for the due administration of justice according to law, or for the proper appearance of it.

For as you all know, justice must not only be done but be seen to be done.

Your Honours, members of the legal profession and ladies and gentlemen, thank you again for your warm words of welcome.

ASCHE CJ: Thank you, Your Honour. Ladies and gentlemen, this ceremony is traditionally one in which government, through the Attorney-General and members of the profession, extend a welcome to the newly appointed judge. But I need hardly say that the warmth of that welcome is shared by the judges of this court. We are delighted to have Mr Justice Mildren with us, we look forward to his assistance and we are sure that he will be a remarkable and fine judge of this court.

Indeed, as you, Mr Director, pointed out in saying that there should be no mitigation, I note that he has not been given any such and he is listed for 10 am on Monday for his first trial.

Please adjourn.
