

SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING
ON THE OCCASION
OF
THE APPOINTMENT OF
THE HONOURABLE CHIEF JUSTICE B. MARTIN

AT
ALICE SPRINGS
TUESDAY 4 MAY 1993

Transcribed by:
Court Recording Services (NT) Pty Ltd

ANGEL J: This ceremonial sitting of the Supreme Court of Alice Springs is to mark the occasion of the recent appointment of His Honour Martin CJ and to afford the Alice Springs community and legal profession an opportunity to welcome him.

Mr Horton, do you move?

MR HORTON: May it please the court, I appear on behalf of the legal practitioners of Alice Springs and, by extrapolation, on behalf of the Central Australian community. I am most pleased in this corporate guise, and personally, to congratulate Your Honour on your appointment as the Chief Justice of this honourable court, and to welcome you to Alice Springs for the first time in that capacity. I also extend greetings to your wife, Lorraine, happily here present to share this occasion. As I stated when I wrote to Your Honour on behalf of local practitioners to congratulate you upon your appointment, the Alice Springs flavour which your background gives to the appointment is most welcome and pleasing. There is a certain vicarious pride.

I have seen a transcript of the ceremonial sitting in Darwin on 31 March 1993 to mark the occasion of your appointment as Chief Justice. I note that the court was addressed by diverse learned counsel - Darwin people - on behalf of the Northern Territory Government, the Northern Territory Bar Association and the Law Society of the Northern Territory. It seems that they had, to a large degree, second-hand instructions. This can be explained by, on the one hand, the Berrimah Line and, on the other hand, claims that I refused to provide ammunition against Your Honour, which I admit.

In fact, most of that which Darwin counsel would have needed to know I placed on record at a ceremonial sitting held in this courtroom on 22 May 1989, to mark your appointment as a Justice of this honourable court. Nevertheless, the Darwin transcript reveals some oddities. It indicates that the Top End spelling of 'Ayers Rock' is different, there are references to a non-existent former Alice Springs legal firm of Martin & Barker and to Your Honour having been Lord Mayor of the town. I'm glad to put the record straight, at least with respect to the Alice Springs aspects of Your Honour's career.

It might well be argued that the principal ceremonial sitting for this occasion should have been held at Alice Springs and a secondary event in Darwin, for I think it fair to say, notwithstanding your absence of now over 12 years, that Alice Springs was your primary legal stamping ground; your professional home town. As I've stated before, Your Honour was a latter day pioneer of the profession in this town, combining in private practice with the unique Ian McClellan Barker as Barker & Martin, which was for many years the only legal firm in the town.

Indeed, it provided the only legal service between Darwin and Port Augusta and between Mt Isa and Kalgoorlie. That situation continued until the advent in the latter '60s of one Paul Anthony Edward Everingham. I might in fact pass on some greetings at this point, Your Honour, in that I had a chance meeting with the said P.A.E. Everingham in the Brisbane Airport last Friday night, and his words were on learning of the appointment for the first time, "I'm delighted".

You continued in private practice in Alice Springs until 1981, seeing rapid expansion of the community and the legal profession. In that time you were involved in an extraordinary range of activities in addition to the law. In local government you were a member and then Chairman of the Town Management Board, which preceded the Alice Springs Town Council. You served that council as Alderman, Deputy Mayor and then from 1972 to 1975 as Mayor.

Your Honour was a hard-working member of the Rotary Club of Alice Springs, prominent in the Uniting Church and the foundation Chairman of the Araluen Arts and Cultural Trust, through which was born the Araluen Centre. One of your principal recreation activities involved amateur theatre, where you were a notable actor and director in both dramatic and musical productions. There were other extra-curricular activities, especially in sports, including hop, step and jump championships at dinner parties and legal wrestling. Yes, "wrestling" not "wrangling". I shall not elaborate here.

From 1970 to 1977 you were on the council of the Law Society of the Northern Territory, including as Vice President, and you also served on the Northern Territory Law Reform Committee. Whilst still in Alice Springs you chaired Northern Territory Government committees established to inquire of the welfare needs of the Territory and of the pastoral land tenure in the Territory. You were the Chairman of the Northern Territory Council of the Australian Bicentennial Authority and a director of that authority.

In a more private and personal capacity, Your Honour and your wife Lorraine were a much respected element of the fabric of the Alice Springs community. You both encouraged and supported many others who came to live in the then quite small Alice Springs township, with an extraordinary friendship and hospitality overwhelmingly genuine and generous.

For many years the Martin family provided, as I have put it before, a warm nest of support and encouragement for a diverse flock of fledglings arriving in Central Australia from distant parts. Those persons involved remain indebted. My wife and I are among them. In a broad sense the whole community is likewise indebted, since behind this Martin caring for people was always the fostering of Alice Springs in particular and Central Australia in general as a good place in which to live and which to support. This attitude was indicative of Your Honour's great love of the region.

Unfortunately for Alice Springs, but happily for the Territory, you expanded your embrace to the whole Territory. In 1981 you moved to Darwin to become Solicitor General. The following year you became one of Her Majesty's counsel and a Member of the Order of the British Empire, the latter for services to the community of Alice Springs. You continued as Solicitor General until becoming a judge of this honourable court in September 1987, which possession you held until your present appointment. You have been awarded the Order of Australia.

My earlier comments notwithstanding, that said at the recent ceremonial sitting in Darwin to mark your appointment as Chief Justice was accurate in at least a couple of respects. That is, of course, in addition to that which Your Honour said. I mention two. Firstly, there was evident a most generous and genuine respect for you and your wife personally, and for your work throughout your time in Darwin. The Attorney-General was quite emphatic in acknowledging your important contribution as Solicitor General, repeating his predecessor's statement that your contribution in that capacity was wise, forthright, carefully considered and consistently practical.

Secondly, there were many most gratifying references to an Alice Springs legal firm presently known as Martin & Partners. I could go on. In fact, I intend to but in another place. It will suffice here to say, on behalf of the legal practitioners of Alice Springs and, as I have said, the community of Central Australia as well as personally, I count it a great pleasure firstly to congratulate you most warmly upon your appointment as Chief Justice of this honourable court; secondly, to welcome you and your wife Lorraine most affectionately on this occasion of your first visit in your new capacity to Alice Springs, which I know is a special place for you both, and; thirdly, to wish you well in the continuance of your service to the Northern Territory in general and to Central Australia in particular. May it please the court.

ANGEL J: Thank you, Mr Horton.

Mr Stirk, do you move?

MR STIRK: I so move, Your Honour.

I appear on behalf of the Law Society of the Northern Territory and on behalf of all legal practitioners in the Territory to congratulate Your Honour on behalf of the President and members of the council on your appointment as Chief Justice. Traditionally, Your Honour, these occasions are used to dredge up embarrassing stories from the past about the appointee or, in some cases, the retiree. As my learned friend Mr Horton has remarked, there is a time and place for that and Mr Horton has decided that tonight is the place for that.

So I will say little more in that regard, except perhaps to reflect on a tale that Mr Hiley QC told about Your Honour appearing in land claims during your practice in Alice Springs; and in particular the land claim many years ago at Ayers Rock, where Your Honour acted for a gentleman who was convinced that Ayers Rock was hollow and housed 50 divisions of Panzas which were going to break out and cause hostilities if the land claim was successful. Fortunately, Your Honour, that land claim didn't proceed at that stage. In any event, Your Honour was the person who diffused a further potential confrontation in that land claim.

Mr Barker QC, who has been referred to on a number of occasions, has been heard to say of Your Honour that you are a most respectable character; and a man like Mr Barker's commendation, I can say little further. Your Honour, on occasions like this it's probably best to look to the future and look to the qualities and experience that Your Honour brings to the position of Chief Justice. As has been mentioned, Your Honour has practised for many years as both a barrister and solicitor in Alice Springs, and you are no doubt familiar with the trials and tribulations of practising both in a small community like Alice Springs - and, for that matter, I think the Northern Territory would be considered a small - most practices are fairly small in Australian terms. Secondly, Your Honour's acted for many years as counsel in your capacity as both Solicitor General, which was initially combined with the administrative role of Secretary to the Department of Law.

I am sure Your Honour's experience equips you well to deal with and, if appropriate, to implement the dramatic changes that are now being called for in the legal system; bearing in mind the often competing demands of both government, the consumers and the profession. Indeed, I think tonight whilst there's a dinner for Your Honour, "The Investigators" program is spending a half hour special on the cost of justice.

It's no doubt that probably in the last year or two the whole question of access to courts and the costs of justice seems to be a consuming passion of commentators in the media, and there is no doubt that Your Honour is going to be asked to address some of those questions in the years to come. We obviously hope that these clamours for reform don't result in a government's view that we need change for change's sake. It's comforting to note that the recent Senate inquiry into the costs of justice at least accepted the fundamental soundness and importance of the legal system, whilst at the same time recognising the needs for change.

Those needs for change are well known to the profession, and indeed Your Honour has been pre-eminent in directing the court towards a pace via management and other means of ensuring an orderly flow of cases and the quick getting on of matters before this court. However, it is also worth pointing out that much of the cost of justice is driven in part by the

exceedingly large volumes of legislation which is being put out by both Federal and State and Territory levels, and in many ways the cost of that and the complexity of some of that legislation has increased the cost of justice to men and women of Australia.

In terms of case flow management the Law Society, through its president, has traditionally had a lot to do with Your Honour in that regard and Your Honour has emphasised that you regard that as a very important priority in the future. Whilst indeed it is a truism to say that justice delayed is justice denied, it's equally true - and it's been stated in many cases - that speed is good, but justice is better. Therefore, although the profession recognises the need to lift its collective game, it's inappropriate that the court can become a club with which to beat errant practitioners to the detriment of their clients.

The challenge for Your Honour will be to find an appropriate balance within the ambit of the competing claims of those who want courts to run at full speed, and those on the other side who want justice. It's easy to say, Your Honour, that - sorry, I'll withdraw that. It's easy to say, Your Honour, that a quick case is a good case; but there must always be a consideration that in the case of some parties, those parties want their day in court regardless of what the case flow management system says, regardless of what their advisers tell them.

In closing with those words, I wish Your Honour well in your term as Chief Justice and we all look forward to working with you in the processes of reform which you will undoubtedly bring to this court. It's also apparent that when we gather many years hence to farewell Your Honour, the legal system will be substantially different from that which we now know. It will be Your Honour's challenge to preside over those changes. May it please the court.

MARTIN CJ: Your Honour, Mr Horton, Mr Stirk, distinguished visitors and ladies and gentlemen, I am most appreciative of your generous remarks and the warm goodwill which you have shown to me. In taking up the office of Chief Justice I am greatly encouraged by your expressions of confidence and by the attendance of some members of the legal profession, distinguished members of the community and friends, and not the least of course my wife Lorraine who is here and thus continues to give the support which she has always so freely bestowed. It is a special pleasure to be sitting in Alice Springs in my new capacity. I thank you both for your discretion in many things, and I am not deterred by your threats about what may be said elsewhere. From my own part I would simply remind you that one way or the other, it is likely that I shall have the last say.

I follow in the footsteps of the distinguished Chief Justices of this court who by their efforts and those of their fellow judges, including my present colleagues here and

elsewhere, have seen to the firm establishment of the court and its development in accordance with the high standards and traditions of superior courts throughout the land. In accepting this position I have singularly failed to take heed of a quotation I heard recently, which I mentioned to some of my acquaintances as my adopted creed. The rhetoric went this way: "Have you ever heard a man on his death bed say, 'I wish I'd spent more time at the office'?".

Having referred to the traditions of the court, it would be most ungracious of me to break that which requires that on occasions such as this the newly appointed Chief Justice speak up about matters to do with the administration of justice within his court's jurisdiction. It may seem surprising to contemplate it, but, God willing, I expect to be in this office at the turn of the century; that rather extraordinary moment when we'll all be reflecting upon the past from our various perspectives. Hopefully it will then be said that much progress has been made in remedying those things which trouble us and the community now.

Much has been achieved since St Luke proclaimed, "Woe unto you lawyers, for you've taken away the key of knowledge"; or since Shakespeare caused Dick in "Henry VI" to prognosticate, "The first thing we do, let's kill all the lawyers". Nevertheless, there remains much to do and the court must be ever ready to adapt to the real needs of the community it serves, particularly in matters of practice and procedure.

The starting point is the statutory responsibility cast upon a Chief Justice for ensuring the orderly and expeditious discharge of its business. What is that business? Well, it's not widely appreciated that the Supreme Court is of unlimited jurisdiction, except insofar as it has been especially effected by the Parliament. Its current duties include the adjudication of disputes at first instance between citizen and citizen, and citizen and state. It applies the law to be found in the common law, or equity and statute. It is responsible for the administration of the judicial aspect of the criminal justice system in relation to more serious offences.

It is empowered to hear and adjudicate upon appeals from decisions from the Courts of Summary Jurisdiction, the Local Court, Work Health court and Motor Accident Tribunal. As well it exercises a general supervisory jurisdiction over the exercise of executive power by Government, and its instrumentalities insofar as it affects the rights and expectations of individuals. All of these duties and the work undertaken ancillary to them are important, not only to the parties involved but to the community at large.

The business of the court also involves the administration of its own judicial system. The Court of Appeal and Courts of Criminal Appeal administer discipline when the decisions and reasons leading to decisions of single

judges are called in question, where they are subjected to rigorous examination and correction if necessary. The judges are all very busy taking their place in the discharge of all of these duties. The scope of work and number of judges does not afford the benefits of specialisation. If an urgent matter arises, it must be dealt with as best it may whilst the regular and ordered work of the court goes on.

Until quite recently the court sat permanently only in Darwin and intermittently, although very regularly, at Alice Springs. A few months ago Mildren J sat at Ali Curung. It was appropriate and convenient to do so and suitable arrangements were able to be made. I recall the predecessor to this court often sitting in Alice Springs almost 30 years ago, and it was done so long before that. The population of the town was then much less than that of Katherine now, to which of course must be added the significant numbers of people living in communities which relate to those places.

Judges in the early years sat in numerous places throughout the Territory. Although there may be some additional cost to the court in sitting in other centres, there may well be off-setting savings to government and especially the parties, a matter which is presently being investigated. Not only may it be in the interests of justice that the court sit elsewhere, but modern communications technology will undoubtedly be employed more and more in enabling parties, witnesses and legal representatives to appear before the court wherever it may be sitting. We've already employed telephone and video conferencing facilities to receive evidence from both inside the Territory and out. The cost savings are potentially enormous.

Compare, for instance, the cost of having an expert residing in Melbourne travelling to a studio in that city, having his or her evidence beamed into the court in the Territory at a few hundred dollars an hour, compared with the expense of his or her being flown here and back; including fares, travelling expenses and professional fees, to say nothing to the inconvenience to the witness and those who may depend upon him or her in their normal daily work. Teleconferencing and video conferencing between practitioners in Alice Springs and the court in Darwin is inevitable. I've recently entered into arrangements, by consent of the parties, whereby the evidence of an expert witness who is presently living in Edinburgh will be taken by video conferencing in Darwin in the course of the next week or two.

Having the means of reducing the costs and other expenses of conducting trials does not go to the root of the problems which are now perceived in actually having time within which to expeditiously conduct the trials once the parties are prepared. Delay is said to be the millstone hanging around the neck of the present system; it drags it down. The time taken to prepare cases is too long and time taken to have them brought on for hearing once set down for trial is an added burden. It may amount to a disincentive to the attainment of justice through the courts.

What is required is a radical change in professional culture and in the attitude of the court, which, I am pleased to say - and Mr Stirk has referred to it - is already happening. The time when it was up to the parties and their legal advisers to regulate the progress of civil litigation in particular, from originating process through to trial, has gone. Over the past couple of years this court, along with others, has taken a vigorous pro-active role in case management.

The court sets the agenda and the timetable in each case in consultation with and, for the most part, with the co-operation of the legal representatives of the parties. It is prepared to exert its authority and to force the pace if necessary. It may be expected that the court will develop fresh rules to give added impetus to this role. The somewhat tentative beginnings in this regard in Alice Springs will undoubtedly be firmed up beyond that, as there is a need to adopt an ethic which induces the view that if a civil trial is had, then the system has failed; not for the want of trying on the part of the court, the parties and the practitioners.

It is undoubtedly far better for litigants to resolve their differences between themselves, rather than have a resolution imposed upon them. On the one hand, they know the outcome and are prepared to accept it and thus everybody involved wins: on the other, they do not know the outcome and the surprise ending will not always be pleasant, because someone must lose. Greater disclosure by all parties, once issues are properly defined, will enable them to assess their respective strengths and weaknesses and be receptive to sound advice. Of course, some disputes - more particularly some parties - will be intractable and then the courts will willingly hear and determine the issues.

Much has been said about diverting civil disputes away from the courts, and there is activity in many areas in that direction. I believe our primary objective must be to ensure that there is no need for the diversion process to take place in the Territory. The rights of people can only be properly protected within the court system where, if need be, their disputes may be resolved with the assistance of and by those who are not only trained for the task, but whose impartiality and independence is guaranteed by the state.

That is not to say that alternative dispute resolution techniques - that is, alternative to the trial process - such as mediation and conciliation do not have their rightful place; of course they do. But it is preferable that they be available through or annexed to the courts, which can control and monitor the process. People must not be left to feel that they must go elsewhere in despair; that the time honoured and proven institutions established to assist them are not able to respond to their needs. We must remember that we are here to serve the public, not ourselves. These and other measures may well reduce the cost to litigants and must be of assistance to those who are presently disenfranchised from access to the court system.

Compared with many other jurisdictions, the delay from when a matter is ready for trial to when it is to be heard in this jurisdiction is not poor. Nevertheless, you all acknowledge that improvements can be made. Just an example: although we have only commenced recently to compile meaningful statistics to prove the point, experience shows that many civil matters listed long before for days of hearing settle at the last minute. In the criminal list again, trials which have been listed long before to take days are also settled by virtue of a late change of plea or other circumstances, often at the last minute.

The committed days, and there are far too many of them, are then largely lost for the use by other litigants. As things stand, it is rare that another case can be brought on at short notice. The reasons for late settlement or plea are many, amongst them that the parties and their legal advisers do not devote the required attention to the case until the last minute when, for the first time, the strengths and weaknesses are disclosed and they start to talk to each other. It is only then that it becomes realised that abandonment or compromise is the better solution.

The effective use of listing back-up trials is tempered to some degree by the availability of suitable counsel to appear at short notice, a matter which may be of special influence and of particular importance in Alice Springs. But difficulties in having witnesses from remote places available on short notice may largely be overcome by the technology to which I have already referred.

It cannot rightly be said that delay after setting matters down for trial until trial takes place, in either the civil, criminal or appellant jurisdiction, lies at the doors of the judges of the court. We turn up to work every day and are available to hear whatever is ready to be heard, and it is not being suggested that we do not come to Alice Springs often enough.

The status of the court as a place where justice is judicially administered and as one of the most important institutions and arms of government must continue to be respected. It was not so long ago that in the Territory copies of memoranda for distribution to public servants were delivered to the Chief Justice and judges as a matter of course. The distinction has, I'm glad to say, been forcefully made and is now properly observed.

There remains however some areas of concern; perhaps not major in themselves, but nevertheless indicative of a view - probably born of ignorance or lack of thought or sensitivity - that the resources devoted to the use of the court through the parliamentary process can be summarily altered. The Chief Justice, as I've mentioned, has a statutory responsibility to see to the orderly and expeditious discharge of the business of the court. That responsibility cannot be properly discharged unless he or she has the opportunity to take part in the ongoing processes related to formulation of

budgets and the allocation and re-allocation of resources, insofar as they may have any deleterious effect upon the administration of justice.

The establishment of the office of Courts Administration is a unit within the Department of Law that provides a valuable focus and a resource for the acquisition, maintenance and proper administration of the court's infrastructure. By "infrastructure" I mean not just physical assets, but money and people. One day soon, we hope, the office may be established as a department in its own right with the greater responsibility that that entails, but perhaps presenting greater opportunity for the Chief Justice and the judges to assist in the ordering of priorities and the allocation of resources.

Much has been said about sentencing, from time to time. It's a lively debate involving the community as a whole, the offenders, the victims, the Parliament, the Executive and the courts. As in many other matters, the position varies immensely from place to place throughout Australia and what may be of concern in one state, may be not a true reflection of the position in, say, the Territory. Nevertheless, it is essential that the rule of law be maintained in this area as in all others, and that in every case the court continues to look at the circumstances of the offence, including its consequences, but as well the circumstances of the offender.

These and many other things will continue to be upon us over the next few years. The days of the quiet life, golf on Wednesdays and long lunches are long gone for the modern judge. He or she must be ever alert to the rapidly developing and sometimes dramatically changing law, whether brought about by statute or by reason of binding judicial decision. The indications are that judges must also become computer literate. It will not be long before counsel and the judge will all be equipped with a lap-top computer set up on the bench and the bar table and upon which, amongst other things, they can each instantaneously and contemporaneously recall the transcript of evidence and documentary exhibits. At the same time they may be receiving a facsimile copy of a document just referred to by a witness in a remote area like Melbourne, and who appears on the television screen within the court-room. Who knows, at future special sittings our absent judicial colleagues will take their place on the bench by medium of a television screen.

It goes without saying that the judges must continue to have the sensitivity to community values such that it cannot be said that if one of their number fails in some respect, then all must necessarily fall. The subjective views of the disaffected litigant or his or her supporters in a particular case conducted before a particular judge ought not to be used as a means of calling in question the integrity and learning of the judiciary as a whole into question.

It is the law which determines so much of the life and happiness of the community and the individuals within it. Sir Garfield Barwick once said, "If carelessly or indifferently administered, it can cause human suffering and at times distort the human spirit til only hopeless bitterness remains". In all these things the court and the profession must work together; not only as between themselves, but amongst themselves. We've come to trust the profession and rely upon it. Without your continued support, much of what it is hoped will be achieved may be found wanting.

To succeed may well mean adapting legal practice to accommodate the needs of the times, in the interests not only of the practitioners or a particular client but of the court, the community and the law generally. The court's efficiency in the discharge of our judicial duties depends very much on that of the profession. Thank you. The court will now adjourn.

ADJOURNED AT 9.40 AM INDEFINITELY