

THE FULL COURT OF THE NORTHERN TERRITORY

A SPECIAL SITTING

TO WELCOME

THE HONOURABLE JUSTICE RILEY

FULL COURT:

MARTIN CJ
KEARNEY J
ANGEL J
MILDREN J
THOMAS J
BAILEY J
OLNEY J

THE HONOURABLE A. ASCHE QC

TRANSCRIPT OF PROCEEDINGS

IN COURT NUMBER 1

ON MONDAY 1 FEBRUARY 1999 AT 9.04 AM

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Riley[Edited]

RILEY J: Your Honours, I present my Commission as a judge of this honourable court. I took the prescribed affirmation before Her Honour the Acting Administrator, this morning.

MARTIN CJ: Thank you, Riley J.

I will ask the Master to read the Commission.

THE MASTER: 'The Honourable Trevor John Riley, know ye that reposing full trust and confidence in your loyalty, learning, integrity and ability, I, Minna Lydia Ruth Sitzler, Acting Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council of the Northern Territory of Australia, in pursuance of section 32(1) of the Supreme Court Act 1979, do, by this my commission, appoint you, Trevor John Riley, one of Her Majesty's Counsel, learned in the law for the Northern Territory and the State of Western Australia, to be a judge of the Supreme Court of the Northern Territory of Australia from and including the 1st day of February in the Year of Our Lord 1999, 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, during good behaviour with all rights, powers, privileges, advantages and jurisdiction thereto belonging to or appertaining'.

Signed by Her Honour's command.

MARTIN CJ: Thank you.

Mr Solicitor, do you move?

MR PAULING QC: May it please the court, I appear on behalf of the Attorney-General of the Northern Territory to warmly welcome Your Honour to your place on this Bench.

There is a particular reason why I am personally happy to do so, because Your Honour is the third President of the Northern Territory Bar Association to have been elevated to this Bench. In 1974, when you came to Darwin, the Bar was formed by two persons, one of whom has been a member of this court, and one's mentor in those days, Sir William Forster, foresaw the very event that we are witnessing today in that the Bar would be a rich source of members of this Bench.

Your Honour was born in Western Australia, in the broad wheatfields at Bruce Rock, and who would have known that from those halcyon fields one would come to even greater. Your Honour went to Perth and completed your law there. You were in partnership as soon as you were admitted. I do not know whether you had to fracture the partnership you had done your articles with, but two of the names, with yours appended to them, became a new firm immediately on your admission.

In 1974, with a sense of wanderlust, you had the misfortune to run into Ian Barker, in Darwin, and became recruited by the firm of Withnall & Barker. He, of course, was himself a President of the Bar Association, and you worked with him at Withnall & Barker in the Cercarelli Building in Cavenagh Street.

I mention this only because it might explain why Your Honour moved on in a particular way.

With the Bar having been formed, it was desired that Mr Barker, being a QC, would join the two of us and we would have one third of the Bar as silk, but he completely refused because the terms and conditions on which he dissolved his partnership were so comfortable for him he declared that nothing on earth would move him from the Cercarelli Building.

Well, Your Honour was here in 1974 when Cyclone Tracy removed him, and a lot of other things, from the Cercarelli Building. Your Honour was not here, unfortunately, during the back-breaking time of carrying those filing cabinet desks up into the City Mutual Building, and you have never thanked me for it.

Your Honour, Mr Barker, having been blown away from Cavenagh Street into the Bar, and the Withnalls having contracted the business, Your Honour rang Hugh Bradley to see if there was any work that he knew about. The only answer you received was, 'You're hired'. Then began a long period with Ward Keller.

May I say that you were, as a solicitor, much admired and a great supporter of the Bar. Your Honour eventually, very wisely, went to the Bar and soon developed a very wide practice and a great reputation.

The decision to take silk only seemed to add to your popularity and you were much sought after both by the Commonwealth Government and the Northern Territory Government. Indeed, your last case, a very lengthy case concerning BTEC, ended the day before an official announcement was made that you were to be appointed to this Bench.

May I say that Bruce Rock appears to have inculcated in you an earthy common sense, a practicality that is sadly lacking sometimes. Your Honour, when faced with the inevitable, would find a sensible way to settle things; a common sense way to calm things down. It is a great quality that Your Honour should bring with you to your judicial duties.

Your Honour, on behalf of the Northern Territory, on behalf of the Government and the citizens of the Northern Territory, your appointment is very welcome indeed, and we congratulate you.

MARTIN CJ: Mr McDonald, do you move?

MR McDONALD QC: May it please the court. The barristers of the Northern Territory welcome and congratulate you, Your Honour, on your appointment as a justice of this court.

It is my pleasure and my privilege to appear this morning on behalf of the Northern Territory Bar Association. Your Honour's appointment is a popular one. I know that because years in the law tell you there is an ambience in the court and one only has to look around you today at the people, and the number of the people here today, attest to the popularity of your appointment.

The people here today are those, Riley J, who know you and have come to respect you for the personal qualities you have, for the legal skill, and the acuity that you have shown, and the promise that you undoubtedly have to be an excellent judge of this, the Supreme Court of the Northern Territory.

You take office on the brink of the 21st century. You will be one of the judges whose intellectual gifts and wisdom will serve the people of the Northern Territory into the new millennium. We can take heart that, if your past is any guide, you will serve and your service will be characterised by hard work, quiet integrity and civility to all you deal with.

Mr Pauling has spoken in his characteristically humorous way of your past from Bruce Rock, your career with Withnall & Barker, and I will not dwell upon those. I will refer to your period from when you signed the Roll of Counsel in April 1985 and joined the Northern Territory Bar.

I remember your and Jan's arrival at Beagle House, well. You both looked pretty well as youthful as you do today, although the nature of Your Honour's attire today is in marked contrast to the denims and open-necked shirt that you wore in your first exploratory days at Beagle House. Those exploratory days were quickly over and your career as a barrister got off to a confident and sure early start.

From 1985, your practice grew immediately, with an initial early emphasis on common law. However, there soon came an ever-increasing diversity of instructions and work, and an increasing diversity of responsibilities and areas of the law to master, which you did. Your commitment to your cases was evident, as was your ability to master sometimes very complex facts, and facts in cases that went over a long period of time.

Your career was meteoric. Four years later you were appointed Queen's Counsel for the Northern Territory. This was at a time when you had an important and ongoing responsibility for the Commissioner of Police and the Northern Territory Government in the Royal Commission into Aboriginal Deaths in Custody, a period that Your Honour is unlikely ever to forget - three and a half years of slog.

You put in the hard, the long, and sometimes lonely hours that a barrister must. As senior counsel your practice flourished to the point that you clearly led the Bar. You received instructions from a wide variety of clients; you acted for the elevated and the relegated. You appeared regularly in this court, in the Federal Court and in the High Court.

Amongst the cases in the High Court, if I can refer to but two? Marion's case, where the quality of the arguments put by you and other counsel in that case and the importance of the issues, the profound issues, of whether the Family Court could intervene and make orders in respect of the sterilisation of the child, provoked amongst the most thoughtful and powerful judgments that I certainly have read from the High Court in the last 20 years.

So too you appeared for the Minister of Immigration in *Chu Keng Lim v The Minister*, now a leading authority on the separation of powers doctrine, chapter 3, and the influence of treaties on statutory interpretation.

As a barrister you are industrious, always courteous, and incisive. You gave of yourself for your clients, your profession and your professional colleagues. You were the President of the Northern Territory Bar Association for I cannot tell how many years because our records, as usual, are not quite good enough to be able to tell precisely, but for even longer you were head of William Forster Chambers, and you, for a long period of time, contributed to the life of young lawyers in advocacy training, and participated in other tribunals, the football tribunal, where the sentences seemed to be - well, it seemed that mandatory sentencing came into the football tribunal well before it did in the Northern Territory.

In any event, today, Riley J, you have the pleasure of having your loving, loyal wife and daughter - I cannot see Shane, but I am sure he is here in spirit - your mother and your father.

We in the Bar Association salute you, Jan, for your contribution to your husband's successful career, for your support, your patience, and your support for him over a long period of time. You well understood the pressures that can sometimes come in the life of a barrister. So your belief in Riley J as a husband, a father, and a professional, we acknowledge.

We also acknowledge your mother and father, Mr and Mrs Riley, who brought you up; who provided you with powerful early example and an incentive to succeed. How pleasing it must be for them to be here today to witness this occasion.

By your appointment, you have also made a contribution to geography. Mr Pauling has referred to it; I will not dwell on it. The small Western Australian rural town of Bruce Rock, where you were raised, now has a famous former resident of which it can boast.

So whilst we focus happily on you, as the new incumbent to the office of a justice of the Supreme Court, we do not forget that occasions like this have a wider significance, being, as they are, a public declaration of respect for the office of a judge and the institution of the judiciary. In our system, the human hopes and hunger for justice are very much personified in the role, the function, and the people who are the judges of the Territory. You join a good court that serves the people of the Territory well.

It is said by your colleague, Graham Hiley QC - who is happily here today - that very soon after your arrival in the Northern Territory in 1974 you, your wife Jan, and your young son Shane, and Graham and his wife Sue, and I do not know how many children Graham had at that time, went to Daly River. In a gesture of innocence and great confidence, you all went down to that evocative river and you swam and you frolicked. The many local crocodiles that Professor Messell was documenting and numbering at that time, you did not pause to consider. Nor were you concerned about Professor Messell's theory, being developed at that time, that *Crocodylus porosus*, the salt-water crocodile, was an opportunistic feeder.

You obviously had not been a reader of the Northern Territory News, nor had you read their graphic and ever-continuing articles about 'croc horrors'. Just imagine today if you were to take such a swim and tragedy struck. Imagine the delight of the editorial writers and the sub-editors: 'Judge in croc horror', 'Judge thwarted by croc', etcetera.

But, likewise, and with confidence, let you take to the waters of your new life as a judge, do justice to all manner of people that come before you. The court, and now you, Your Honour, may be assured that you will have the support and continued assistance of counsel, independent counsel, in the years ahead.

At a time which must be one of great satisfaction to you, your wife and your family, we wish you well. Yours is a deserved and a good appointment.

May it please the court.

MARTIN CJ: Mr Southwood, do you move?

MR SOUTHWOOD: If Your Honour pleases.

One of the advantages of having been around the law for a little while at least is having the opportunity of observing friends and colleagues as they make the transition from Bar to the Bench. Some of them do it as if they were born to it; for some it is a little harder to take off the mantle of an advocate. It is told, of one interstate judge who had a plaintiff practice as a barrister, that he continued to refer to the plaintiff as 'my client' for some months after his appointment.

Some appointees, however, change very little themselves, but have a great effect on the law. I anticipate that Your Honour Riley J will soon demonstrate the qualities Your Honour has displayed throughout your professional life, and that your appointment will be good for the law of the Northern Territory.

Your Honour's characteristics as counsel were discipline, industry and politeness. Your Honour has a gift for expressing difficult points simply and precisely.

I would like to remind Your Honour of some matters which Your Honour may find of assistance. The life of a judge can be much more restricting than that of a barrister. There is the difficulty of having to follow cases which the court previously decided against you, or against your arguments as counsel. There are certain phrases which you will have to learn and there are other rules of conduct, some of them perhaps a little arcane.

As to the latter, there is the often forgotten broad rule in *Scott v Numurkah Corporation* (1954) 91 CLR 300, that at least on some occasions a judge not even listen to music during a court case without the consent of both parties. A further restriction, with the growth of judicial review, is that you cannot say what you are thinking or you may be reviewed for an apprehension of bias. Yet, if you do not say what you are thinking, you may be reviewed for failure to afford the parties procedural fairness.

As to important phrases, the following phrases may bear remembering: 'Of course'; 'It goes without saying'; 'The arguments can be easily disposed of'; 'Mere' as in 'mere representation' or 'mere equity', meaning 'pure and simple'; 'Is that your best point?'

In conjunction with the last phrase, it sometimes comes in handy to also have a facility with mathematics. I can recall an exchange in a case where counsel appearing said, in anticipation of such a statement: 'I have three points I wish to make. Taken separately they may not amount to much. However, taken together, they establish my client's entitlement'. The judge responded: 'What is three times zero?'

One expression we do not expect however to hear from Your Honour is: 'I do not have the power'.

Moving to one final point, there is the dictum of Lord Chancellor Bacon, the dictum which I am sure Your Honour Thomas J is likely to agree with, and that is: 'Patience and gravity of hearing is an essential part of justice. An over-speaking judge is no well-tuned cymbal'.

Perhaps moving to a slightly more serious note, Dickson J, on his appointment to the High Court as Chief Justice later on, said: 'It is important to maintain the prestige of the legal profession, and it is important to maintain the status of the judiciary'. The status of the judiciary is perhaps first and foremost the responsibility of the judges themselves. The respect of the courts must depend upon the wisdom and discretion and the learning and ability, the dignity and the restraint which the judge exhibits.

We are confident - and I say this on behalf of all the members of the legal profession - that Your Honour's appointment does maintain the very good status of the judiciary in the Northern Territory.

If it pleases.

MARTIN CJ: Riley J, would you care to respond?

RILEY J: Yes, Your Honour, the Chief Justice, fellow judges, Mrs Sitzler, the Acting Administrator, Mr Solicitor-General, President of the Bar Association, President of the Law Society, distinguished guests, personal friends of whom there are many, other practitioners, ladies and gentlemen, I obviously thank you all for your attendance here today. It really is overwhelming, sitting here.

I am especially honoured by the attendance of Mr Austin Asche QC, who sits behind me, a former Chief Justice of this court and Administrator of the Territory, and Doctor Val Asche. I am pleased - although I cannot see her - that my wife and my daughter and my parents are able to be present in court to share this moment with me. My son is not, he is in California pursuing gold in the modern context of computer programming.

I thank you all for the generous and encouraging messages of welcome expressed both today and during the period since the announcement of my appointment, at the end of last year. I have, as many of you know, enjoyed a long, happy and professionally satisfying association with the practice of the law in the Northern Territory, and, more importantly, with the people involved in that pursuit. I am grateful for, and proud of, that association.

I am, as you would expect, very conscious of the honour bestowed upon me and the significant trust placed in me as a consequence of this appointment. At times it has seemed a daunting prospect, especially given the extent to which the business of the court involves the administration of the criminal law and the liberty of the subject.

I have drawn comfort from the many expressions of confidence made to me by people whose opinions I respect. Clearly I will have to look to my fellow judges and to the advocates who appear before me for assistance in the transition from one side of the Bar table to the other. I am confident I will be provided with wise counsel and every assistance.

For my part, I will work diligently and do my best to satisfy the confidence others have placed in me. This is, as some would observe, an interesting time to become a judge. For example, there is, nation-wide, an ongoing re-evaluation of the relationship between the judiciary and the Executive. The tension that necessarily exists between the two is to be expected and can be healthy. However, as a recently retired Chief Justice of the High Court, Brennan J, observed on the occasion of his farewell: 'It is essential that there be mutual respect between the branches of the government for the powers and functions of each'.

I would add that such mutual respect is necessary for the maintenance of public confidence in the courts, and the administration of justice. Provided those involved approach the evolving relationship in that way, I see no threat to either branch of government.

A further example of the interesting times in which we live is evidenced by the rapid change in the use of technology within the courts. Technological development is such that the court today is, in some regards, quite different from that of 10 years ago, and is certainly significantly different from that which will exist in 10 years' time.

A simple illustration is the taking of evidence by video-link. I have led evidence from, and cross-examined witness in the United States, sitting in studios in the United States of America, in England, and in the various States of Australia without my having to leave Darwin. The enormous expense and inconvenience suffered by both parties, and witnesses, previously experienced in obtaining such evidence is now a thing of the past. The necessary facilities are now available in this court and are routinely being used to advantage in both the civil and criminal jurisdictions of the court.

There is, of course, the ongoing challenge of delivering justice in a manner which is regarded as acceptable to and affordable by individual litigants in the wider community. The challenge, it seems to me, is to enhance the efficiency of the administration of justice and to minimise the cost involved, whilst maintaining the integrity of the system. That is a challenge this court, and other courts throughout Australia, are striving to meet.

Gleeson CJ of the High Court has recently observed that: 'The maintenance of a viable and accessible justice system is not a responsibility that judges can leave to others, contenting themselves with deciding individual cases as and when they reach the head of the queue'.

I am pleased to note that the courts of Australia, including this court, are adopting a proactive role in this regard and I look forward to becoming part of that process. I believe that, notwithstanding the pressures of which I have spoken, and the technological developments of the present age, the confidence of the community in the system will be retained if the courts and the individual judges continue their commitment to the impartial application of the sound legal doctrine by an independent judiciary.

As will be known to all here, particularly following the comments of Mr McDonald, I have the benefit of the intelligent and unconditional support of my wife, Jan. She is aware of the depth of my gratitude and I will not embarrass her by saying more.

I regard myself as being extremely fortunate in living at this time, in this country, and in this community. In the words of Benjamin Cardozo when he was sworn in as a State Court Judge in New York: 'I will do the best I can in the performance of the common task in which we are all engaged, the great and sacred task of the administration of justice'.

Thank you.

MARTIN CJ: This sitting has been called to allow the local profession to welcome His Honour, and the judges themselves will do so on another occasion.

It is our pleasure to welcome to the Bench the former Chief Justice the Honourable Austin Asche. Some of our members, Gallop J and Morling and Priestley A/JJ, are unable to join us.

Her Honour, the Acting Administrator, and Mr Sitzler, His Worship the Lord Mayor, the Shadow Attorney-General, service heads and other distinguished guests honour the court with their attendance.

After the court adjourns, light refreshments will be available to all in the jury muster room. Weather permitting, at approximately 10.20, the judges and all others attending the Ecumenical church service to celebrate the opening of the legal year. We will proceed from the court building to the Church of England. All of those intending to go to the Cathedral are invited to join in the procession, bearing in mind the service is to commence at 10.30. If the weather is inclement, obviously we will all make our own way.

We thank you all for your attendance. The court will now adjourn.

ADJOURNED AT 9.33 AM INDEFINITELY