

SUPREME COURT OF THE  
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING  
ON THE OCCASION  
OF  
THE SWEARING-IN OF THE CHIEF JUSTICE  
THE HONOURABLE MR JUSTICE K.J.A. ASCHE

AT

DARWIN  
MONDAY, 17 AUGUST 1987

NADER J: Mr Deputy Master, please inform the Chief Justice that this court is now open.

ASCHE CJ: Mr Justice Nader, I have the honour to announce that I hold a commission from the Administrator of the Northern Territory of Australia, appointing me to be Chief Justice of the Supreme Court of the Northern Territory. I now present to Your Honour that commission.

NADER J: Thank you, Chief Justice.

I direct that this commission be now read.

THE DEPUTY MASTER: To the Honourable Keith John Austin Asche:

Know ye that, reposing full trust and confidence in your loyalty, learning, integrity and ability, I, Eric Eugene Johnston, Commodore, Member of the Military Division of the Order of Australia, Officer of the Military Division of the Most Excellent Order of the British Empire, the 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, The Honourable Keith John Austin Asche, to be Chief Justice of the Supreme Court of the Northern Territory of Australia from and including the first day of August in the year of Our Lord One thousand nine hundred and eighty seven, to have, hold, exercise and enjoy the said Office of Chief Justice 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 the 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 29th day of July in the year of Our Lord One thousand nine hundred and eighty-seven. Signed, the Administrator of the Northern Territory of Australia.

By His Honour's command. Signed the Attorney-General for the Northern Territory.

ASCHE CJ: Do you move, Mr Attorney?

THE ATTORNEY-GENERAL: May it please the court, I appear on behalf of the Northern Territory Government to extend a warm welcome and congratulations to Your Honour in your capacity as the new Chief Justice of this honourable court.

Your Honour, it is with considerable pride and pleasure that I witness the attainment of this high office by one whose affinity with the territory is well known. When Your Honour returned to the territory in April last year, you brought with you an outstanding record of achievements gained from a long and distinguished career in law.

After graduating from Melbourne University, you practised at the Queensland bar from 1951 to 1954, and at the Melbourne bar from 1954 to 1975. It was in 1972, during your long practice at the Melbourne bar, that you were appointed as one of Her Majesty's counsel.

In 1976 you were the first appointee in Victoria to the Family Court of Australia, and from 1985 to 1986, you were the acting Chief Justice of that court.

Among the many distinguished appointments held by Your Honour over the years have been those of member of the Family Law Council; presidential member of the Institute of Family Studies; chairman of the Family Law Council Committee on reproductive technology.

When Your Honour presented your commission to this honourable court last year, you spoke of the challenge that the move to this jurisdiction would bring. Since that time you have demonstrated your capacity to diversify into both criminal and civil jurisdictions. That is not to say that Your Honour's vast experience of family law matters has not been utilised. Your Honour has been of particular assistance to the court in this regard, and you currently chair a sub-committee for the purpose of a law reform committee reference on defacto relationships.

Your Honour now faces a new challenge as the Chief Justice of this honourable court, and I have no doubt that Your Honour's great experience will stand you in good stead as you undertake this new task. Indeed, no counsel appearing before Your Honour would have any excuse for presenting a case in a manner which once caused an obviously long suffering Lord Chief Justice Parker to observe that a judge is not supposed to know everything about the facts of life until they have been presented in evidence and explained to him at least 3 times.

Under your guidance, Your Honour, and with the assistance of your brother judges, I am sure this honourable court will continue its steady growth and diversity and prestige.

Your Honour, when my predecessor welcomed you upon your appointment as a judge to this honourable court, he drew attention to the undoubted benefits which would

flow to the Northern Territory from your distinguished career in the field of education. He was, of course, referring to your past appointments which include lecturing part time at the Melbourne University, and the Royal Melbourne Institute of Technology; being a member, a vice president, and president of the Council of the Royal Melbourne Institute of Technology; being the chairman of the Victorian Enquiry into Teacher Education, and your time as chancellor of Deakin University. Upon Your Honour's retirement as chancellor at Deakin earlier this year, you were awarded an honorary degree of Doctor of Literature.

As Your Honour is aware, I also have ministerial responsibility for education, and it is deeply gratifying to know that the territory is now receiving the benefit of your experience in this vital area as the chairman of the Council at the University College of the Northern Territory.

Your Honour's deep interest in Australian poetry is well known, so I think it's appropriate to close with a quote from one of Australia's great poets. This whimsical comment from Banjo Patterson, although not in verse, applies to the High Court judges, but can I believe, be legitimately taken to cover judges of all courts. Banjo wrote:

If I had paid as much attention to my  
lessons as to fish and rabbits, I too  
might have been a judge of the High Court;  
there is a lot of luck in these things.

Your Honour, I'm not privy to the temptations of fish and rabbits which you faced in your days at Darwin Primary School, and Melbourne Grammar. However, I can agree with Banjo Patterson when he says there is a lot of luck in these things, and that the Northern Territory has indeed been very fortunate to have Your Honour take up this appointment.

On behalf of the Northern Territory Government, myself and members of my department, I extend to Your Honour our best wishes, and offer our congratulations on your new appointment.

ASCHE CJ: Thank you, Mr Attorney.

Do you move, Mr Giles?

MR GILES: If the court pleases, I appear on behalf of the Law Society.

Less than 18 months ago we assembled here to welcome Your Honour back to Darwin. At that time we all expressed high expectations for the future and, in particular, Your Honour's expected contribution to this

court and to the territory generally. I am well within the mark when I say that those high expectations have been more than fulfilled, and we look forward to the future with great hope.

Your Honour has been actively and energetically involved in the territory, and you've engaged yourself in territory life, and in the life of this court in particular. In particular I take note of your role as chairman of the Northern Territory University College Council, and it's worthy to note the law course at that college has been one of if not the most popular course.

I also mention Your Honour's great love and enthusiasm for a game played on another court, and one on which many of us have enjoyed Your Honour's good company and keen competition. We hope that your new duties do not take you away from that, or restrict your tennis activities.

Your Honour, you have the full support of the Law Society, and the territory legal profession, and we are pleased to hear of your appointment. We know that you will maintain the high standard and esteem of this court, and we look forward to working with you insofar as we are able to assist you to this end.

If the court pleases.

ASCHE CJ: Thank you, Mr Giles.

Do you move, Mr Pauling?

MR PAULING QC: May it please the court, I rise on behalf of the Bar Association of the Northern Territory to join in these wishes of welcome to Your Honour as Chief Justice.

Some weeks ago I had intended to be here to say some words farewelling the outgoing Chief Justice, but I was against my will detained in Bali. This is a fact that I've been unable to convince anybody of so far, and I hope it hasn't so far destroyed my credibility, that anybody will doubt what I have to say further on.

The outgoing Chief Justice told me, however, subsequent to that occasion, that one of the brighter spots of the morning for him was to find out that I wasn't going to speak in his farewell. Indeed, when I looked at the transcript to see if he'd in fact made that public, I found that our vice president, Mr Mildren, had made a very amusing speech and I was grateful I wasn't here.

Your Honour, I want to join in everything that has come from the Attorney, and from Mr Giles on behalf of the Law Society, but I want to underline two things. Firstly, to say that Your Honour was the first appointee

from Victoria to the Family Court perhaps hides more than it discloses, for since 1976 Your Honour was the second most senior appointee to what is the largest court in the land; a fact that not many people seem to be aware of. And in running the largest court in the land, Your Honour was for a very long time during the absence of Justice Evatt in fact the acting Chief Justice and carrying all the responsibility of that court. That experience over that period, in a court that size, of course augurs well for the running of this court, which is not quite the smallest court in the land but it's close to it.

The second is that Your Honour's academic involvement and contribution to academic life, which not only enriches Your Honour's ability to discharge the functions on the bench but brings to the territory very much needed advice and competence in an area where, with the emergence of the University College, and particularly the law course, we need it. We need to get it right right from the start. Those two facts are very welcome news to practitioners and those involved in all other aspects of the law in the Northern Territory.

On behalf of the Bar Association, Your Honour is most welcome. We pledge Your Honour our full support, and look forward to seeing Your Honour in that position for many years to come.

ASCHE CJ: Thank you, Mr Pauling.

MR McNAB: May it please the court, on behalf of the Attorney-General of the Commonwealth of Australia, the secretary and the staff of the department, I respectfully join in with the warm words and congratulations offered this morning.

If I may respectfully observe, Your Honour, what most emerges from Your Honour's career outlined this morning is an outstanding commitment to public duty on Your Honour's part. This can be seen first and foremost in Your Honour's work from day one, and before with the Commonwealth Family Court of Australia. No court has, I venture to say, been more scrutinised and certainly no other judges have been exposed to such extraordinary measures whilst they carried out their duties.

Your Honour's been a university teacher and a university chief. I mention the chancellorship of Deakin University as one of the many contributions to higher education.

Your Honour has also given great public service in assisting the executive in enquiries such as that relating to teacher education in Victoria and most recently the committee on reproductive technology for the Commonwealth Family Law Counsellor.

Kane J, in a revealing article in the Australian Family Law Magazine wrote:

Our loss is, of course, the territory's gain. This man of letters, this raconteur extraordinaire, this man who has total recall of the entire works of Banjo Patterson - which places him in a high demand for after dinner activities - will be sorely missed by the family lawyers of Australia, territorians excepted.

Your Honour is indeed a fitting successor to the much respected predecessors in Your Honour's great office.

May it please the court.

ASCHE CJ: Thank you, Mr McNab.

Your Honours, Mr Attorney-General, Mr Giles, Mr Pauling, Mr McNab, ladies and gentlemen and friends. It would be ungracious and churlish of me if, for the sake of maintaining judicial aloofness, I pretended that I was not moved and honoured by what has been said today.

I sorely need every encouragement and hope in the serious task before me. A task made the more demanding because of the high quality of those who have gone before, and by the need properly and adequately to represent my brother judges who occupy this bench with me.

I'm heartened by the sight of so many friends here today and by numerous letters of goodwill. For this relief, much thanks.

The total independence of the judiciary, that vital protection of the ordinary citizen, guarantees that no threat or bribe, no consideration of wealth, position or power, can sway a judge from his duty to do right to all without fear or favour.

That same independence means that a Chief Justice cannot have authority over his brother judges, if by authority is meant the right to dictate to them in any way how they should go about forming their judgments. Even on an appeal court where judges sit together rather than individually, his views can command no more respect than those of his colleagues. They may confer to discuss the appeal, but if a consensus does not emerge his colleagues are as free to differ from him as he is to differ from them. This, of course, is axiomatic to anyone who knows the legal system of this country.

A Chief Justice is not to be likened to a chief executive with the right to hire and fire. If he leads it must be by example. Certainly it helps if he is a reasonable lawyer, but it is by no means always true that the Chief Justice is the best lawyer on the bench. He has formal duties, organisational duties and representational duties when he speaks for his colleagues, but only with their permission.

Basically he is the chairman of a body of strong minded individuals. They must be strong minded or they shouldn't be judges; for heaven preserve us from the judge who lacks confidence. That does not mean that a judge should not debate, define, demur, deliberate and develop before he determines. It is his duty to do so, and self confidence is not to be confused with arrogance. But once having properly considered a matter, the judge should find that answer which he may, with some degree of confidence, think is right.

Perhaps he need not be as robust as the judge who used to say, "I may be wrong, but I am never in doubt." But that may be better than the anxious and doubt riddled judge who summed up to the jury in terms of such startling ambiguity that on the inevitable appeal one of the appellate judges was moved to observe that the only passage in the whole address which made sense occurred at 12.30 when the learned trial judge told the jury that lunch would be provided.

Self doubt is not a normal judicial vice. The assumption of omniscience is more frequent. Careful scientific studies of impeccable authority prove that it takes somewhere between 3 weeks and 3 months for a newly appointed judge to conclude, albeit reluctantly, that the last of the great cross-examiners vanished on his appointment to the bench; and that the rapid deterioration of the skill and effectiveness of lawyers seems to date from very much the same time.

Since this discovery is made by every new judge, the dates of the phenomenon move regularly forward and this is a great enigma for legal historians.

The task of chairing a group of these confident, well-informed and uninhibited individuals may seem a daunting one, but a Chief Justice can always adopt the happy expedient of Sir Edmund Herring, an urbane and highly respected Chief Justice of Victoria.

It is related that there were occasions at judges' meetings when Mr Justice A would say, "The answer to this question is perfectly simple. It is so and so." Mr Justice B would say, "I entirely disagree with you. The answer's directly to the contrary". Mr Justice C would interpolate, "You are both completely wrong". Furious debate would then ensue, in which no one would

change his opinion. Sir Edmund would wait until there was some short pause, and while the debaters glared at each other, he would say, "Gentlemen, I am glad we have resolved this matter. Let us go to the next item on the agenda".

Because of this high degree of independence and professionalism in judges, it is obvious that a court may function even if a Chief Justice proves somewhat inadequate to his task; just as a good orchestra will still produce acceptable music under a poor conductor. But just as a good conductor can inspire that orchestra to something more, so a capable Chief Justice, leading by example, can lift the spirit of the court.

It is here that I feel severely my own inadequacies, when I reflect on the character and capacity of that very great leader and friend whose unfortunate illness caused his early retirement from this post. Kevin O'Leary was a scholar of the law; a learned and gifted man; an effective and conscientious worker; and, above all, a true gentleman. He inspired the judges, the court and the profession.

His wife, Pat, had her own very special contribution to make, as a highly talented violinist; and her encouragement and teaching of young pupils, and her general interest in music, has left its mark on the Darwin scene, and it is to be hoped that someone, somewhere, can take up where she left off.

Together with their large and happy family, they provided an example of good parenthood, and good citizenship. I know we all wish them great joy and satisfaction in their retirement, but it was a sad, personal loss to me. He welcomed me warmly on my appointment here, and was ever ready with advice and encouragement. It was a delight to have him as a leader, and I had looked forward to many more years of his guidance and friendship.

To succeed a man such as this is a very heavy responsibility. It is trite to say that I will do my best, but there is little else I can say. I do ask the profession, however, to let me know if I am erring, and I know my brethren on the bench will also perform that service, and I trust they will do it, albeit mercifully, but none the less firmly and frankly.

Perhaps the gods will be as kind to me as to me as they have in the last few years. It is given to few men to achieve so happily a return to a territory where he has spent a happy childhood. There must have been some kind of fate, for even when I turned 18 and joined the RAAF, I returned as a humble ground walloper to this area. I must concede immediately that the war by then was almost over. I never heard a shot fired in anger,

and was only placed in mortal peril once, when unloading the very limited beer supply we received on our remote island, and in the sight of most of the camp, I managed to drop and smash a large carton of bottles. The only other unpopularity I incurred was in being the only one who regretted going south when the time came.

I must confess that I have lost my enthusiasm for the territory. It has been replaced by fanaticism. I have been delighted to have got back to the most exciting part of the most exciting country in the world. To be born an Australian must be the greatest of the gifts of providence, but to live in the territory must be the next. It is not an easy land, and many come, but do not stay.

It is no use pretending that it is not a harsh land. Douglas Stewart writes of the two drovers who would write cheerful insults to each other on the skulls of bullocks scattered along the Birdsville Track, but he concluded:

"Thus drover joked with drover.  
Whether the bullocks joked as well  
Nobody knows or cares:  
But what they wrote on a bullock's skull  
A bullock could write on theirs."

It is good to see here today, many of those who had faith in the territory, and worked for it, and who can see its future, and do not want to leave. These are the real territorians, and I mention, out of many: Alec and Norma Fong Lim; Harry and Nan Giese; Sam Calder. These are just a few of whom I am proud to know, and wish to join. Roy Edwards, whose saga must be written one day, cannot be here, but he and his wife have sent their very best wishes. If you want an example of the complete territorian, then Roy is it. He showed how it was possible to face a harsh environment and succeed with those two vital ingredients of skill and courage.

Finally, my grateful thanks for the presence of my guide and friend when I was a young boy, and she not much older than me, Daisy Ruddick and her family; a real and vital example of a true territory family, who have made me welcome since my return, and I thank them for their friendship.

Mr Attorney, you were good enough to mention the matters I have dealt with in the education scene. With the success of the Darwin Institute of Technology and the TAFE area and the excellent prospects for Darwin University College, the territory is now taking those important steps to keep young citizens here. It is their right to have this education in their own territory and it is another step towards a more

permanent population; and I know, Mr Attorney, how keen you are to see those matters carried through to fruition. After all, we are probably in about the same position as Western Australia was about 40 years ago.

I suspect the future development may be just as explosive here, and my careful and highly accurate calculations inform me that in 2015 a group of territory businessmen will bring back to Australia and nail down in the Darwin Sailing Club, the Americas Cup. I suspect that my brother, Maurice, will be not uninterested in that outcome.

Mr Attorney, you were good enough to mention my great love of Australian poetry and I thank you for the reference. When you were speaking I wondered whether you were going to tell me about Patterson's little poem about Gilhooley's estate; but perhaps it should be left for the lawyers, but you might remember the last line:

"From the barristers' quarters a mighty hurrah  
Arises both early and late:  
It's only the whoop of the junior bar  
Dividing Gilhooley's estate."

As to you, Mr Giles, thank you for your mention of those very serious matters; so much more serious and deeply felt than court matters; and that, of course, is that matter of tennis. Not by any means a sport, but a very serious pursuit which should be, of course, undergone with greatest of care. I am most grateful to those of my friends who have pandered to this craze that I have for tennis, although that does not suggest to anyone who does not know me that I would hold myself out as an expert in the field.

So I come at a time of great development and great challenge. I will try to rise to that challenge. And I thank you all for your support. Above all, I thank my wife, Valerie, whose loyalty has been unwavering and whose sacrifice in following out my own plans to the detriment of her own has been immense. She has stood by; and I believe her great talents will be used for the benefit of this adopted territory of hers.

Members of the profession, friends, I thank you for your reception of me and I will try to be worthy of your trust. Thank you very much.

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