

Ceremonial Sitting*Retirement of Chief Justice Higgins*

13 September 2013

Chief Justice Higgins

It now falls to me to respond to that outrageous flattery which, in a commercial context, would certainly have breached the provisions of the Trade Practices Act.

First of all, I thank the Attorney, Mr Stretton, Ms Blumer and all the members present, all the persons present including – and I am happy to see this – the magistracy, members of ACAT and, of course, the legal profession. And I also join in paying my respects to the Ngunnawal people, the traditional owners and continuing custodians of the land upon which we gather this morning.

Now, in thanking those I have mentioned for their kind words, I do think I should respond in respect of Mr Stretton's reference to Mr Finlay. He is, of course, also a very proud and passionate Bulldogs supporter. I am just glad that Mr Stretton did not mention something he must have said, which was that I was an ornament to the profession. And it is simply untrue to say that I wanted the red, white and blue for these gowns; after all, I am also a Raiders fan.

Now, Ms Blumer, the Tent Embassy still flourishes, of course. The law of the ACT was suspended for three days while the Parliament worked out what to do about it at that time. And I have to say that your account of an injunction being

granted – I think it was – who was it? I cannot remember now. I think it was Mr Purnell that asked me to issue this injunction. It was not in the confessional. If it had been, I would have said, “*Ego te absolvo.*” However, that being somewhat embellished, nevertheless there was some kernel of truth to it. One thing I did regret, though, in my career was that my aspiring to the presidency of the Bar Association was cut short by judicial appointment.

Let me say that everything achieved in this jurisdiction in the past ten years during my time on the bench as Chief Justice has been a result of the hard work and collaboration of those who work at the Court. I include my colleagues, of course, the department and the legal profession. I think the blitz is a good example of the success of such a collaboration and we should all take pride in what we are able to achieve in our jurisdiction, much of which has already been mentioned.

I thank my family and friends who are present. I thank my wife, Gayle, my brother, my sister-in-law and my niece who are, I might say, intent on founding some sort of legal dynasty, each of them being an admitted lawyer. Now, I am not sure that that should be held against them. Indeed, I am very pleased and proud that they have done so. There are a few photographs I recall, one when Siobhan was admitted and one when I was, I think, taking silk. In any event, we have a number of family photographs there to look at.

I do not think, though, that I can match what Connor J once said when I pointed out a case to him which came from Ireland in which a sub-inspector of police called Connor had taken some part in the proceedings which then unfolded. And I inquired of his Honour whether it was a relative, and he responded by looking at me and saying, “I think, Mr Higgins, that his photograph and portrait do not appear on the family mantelpiece.”

I should also like to acknowledge, not only the presence of the members of the Family Court and Federal Circuit Court, which I am very pleased to see. Mention has already been made of my former partner, Faulks DCJ, but Finn J is also present and I am very pleased to see her as well. I also must with pleasure acknowledge the presence of my first employer, David Joseph Crossin. He was in partnership with Mr O’Neill, to whom I was articled, but he was the one that hired me. I do not know if he has ever regretted it. He would no doubt say so if he did.

In any event, I have to say that this court, as I have just mentioned thanking all those who have collaborated in the work of the court, would come to a complete standstill without those who ensure that the inner cogs of our court system continue to turn, maintaining the great machine in which we work within today. And I want to thank my fellow judges the Masters, staff, not only in chambers but the library, the registry, sheriff’s officers and those within JACS – interesting acronym, is it not – who are involved in the administration of justice

in the Supreme Court. And I have been honoured to share the Bench with many distinguished and intelligent judicial officers, as well as of visiting and additional judges.

And I also acknowledge the contribution made by the Attorney and the legal profession, without which the initiatives such as the blitz and the recent backlog reduction program would not have been possible.

Now, it is an appropriate time to reflect on my life and how I come to be here, on my 70th birthday, addressing a full court room. I am yet to decide whether I am on the more desirable side of the bench, but perhaps the grass is always greener on whatever is the other side.

I began attending, as you have heard, school in Canberra at St Edmund's College in 1954, which happened to be the first year that institution opened. In 1961 I went to law school and it was the first year in which that law school opened. I seem to be in a foundation something for – I do not know whether there is some degree of comment on that, but whether I – well, anyway.

It was 1961 when I was articled to Mr Jim O'Neill of the firm Crossin and O'Neill where I worked whilst completing my law degree, which I finished in 1966. I began studying at the ANU law school in the first year of its independent operation as an institution of the ANU. I note that there are many ANU graduates in this courtroom today, both on the bench, the Associates'

table, the bar table and the gallery in general and, may I pause to note that in the person of Justice Gageler, the ANU has now infiltrated the High Court.

Upon graduating, having completed a Bachelor of Arts and Bachelor of Laws, I worked as a Contracts Law tutor at what was then known as the Canberra College of Advanced Education, or, more popularly, the College of Knowledge. It was later to become the University of Canberra. I continued my connection with that University as an Adjunct Professor since 2011, having been on the Law School Board for a number of years.

I was admitted as a practitioner in 1967, at which point I continued to work with the firm of J J O'Neill, subsequently O'Neill and Briggs in general practice, but mainly in the areas of crime and common law. I stayed at O'Neill's until 1971, when I went into partnership with my good friend John Faulks who is now the Honourable Deputy Chief Justice Faulks of the Family Court and present here today.

We practised in all areas, and I do acknowledge the presence of all of my partners from that era; Dennis Martin and my brother, Michael and, of course, my successor in the firm, Bill Coombes. Now, it is good to see all of them today. The firm of Higgins, Faulks & Martin was dissolved in 1981 and became Higgins Solicitors. And it is untrue to say that I encouraged Faulks J to become involved with family law, because of the reason which was suggested.

The real reason was that I thought Faulks J was much more capable and competent to deal with Ellis J, and if you want more details on Ellis J, just ask former Master Harper.

In 1984 I went to the ACT bar. I spent three years as a junior, initially reading with Peter Sheils QC before being appointed one of her Majesty's Counsel in January 1987, and I pause to acknowledge with sadness the death of Peter just not so long ago.

In 1990 I was appointed as a judge of the ACT Supreme Court and of the Federal Court of Australia and have held my current commission of Chief Justice since 2003.

In my 23 years on the bench I have had the honour of sharing it with many great judicial minds and friends.

I have known on the bench four nephews, as the Masters are called to differentiate them from judicial siblings: Masters Hogan, Connolly, Harper and Mossop. I shared the bench with former brothers: Justices Gallop, Crispin, the late Connolly J – a great judge, unhappily taken from us far too early – Gray J and former Miles CJ. And of course, I currently preside over a bench consisting of Refshauge J, from whom you have heard and no doubt you will be wondering how he could serve as a judge after having told so many bare-faced lies. Penfold J, who is known as the “docket judge” for it was Penfold J who

actually worked out the, can I call it the “nuts and bolts” of the docket system and has continued to enforce it, particularly against other judges. And, of course, there is Burns J, who left the comfort of the Magistrates Court as Chief Magistrate, to grace this bench, and Master Mossop who seemed to want to follow in his footsteps, although Master Mossop has to duck under doorways it is not quite the same problem that Burns J might have thought. And on that topic too, I just would like everyone to acknowledge the presence of the former Chief Magistrate Ron Cahill, who is here with his lovely wife. And it was a pity we did not have the opportunity earlier on to properly farewell him, but I hope we will make up for that today.

Now, I also acknowledge the visiting and additional judges and some of them are present today. We have Katzmann, Rares and Cowdroy JJ with us today who are all judges of the Federal Court, but are valued colleagues as additional judges of this court, and I also note the presence, too, of Nield and Sidis AJs, who have been, I gather, pitch-forked by the Attorney into serving a bit longer. I do not know whether that will imply, in the case of at least Nield AJ, a divorce proceeding but if so, Faulks DCJ is here to take care of that.

Now, my retirement means that regrettably there will be no remaining judicial officers jointly appointed both to this court and the Federal Court, although if that can be arranged, it would be a very good thing. It certainly does not mean, though, that the connection between this court and the Federal Court will cease.

We are grateful that the tradition of Federal Court judges visiting our court in order to ease pressure in our own jurisdiction will continue.

This is most important because as you will appreciate, with a Bench of four, and if you have an appeal to three and an appeal from one, that adds up to the full compliment. There is no room for anything, not even leave. So we could not run an appeal court without the assistance of those Federal Court judges, and long may the association continue. In fact, I note that one of the apologies for today, and I have an enormous list of apologies which I will not attempt to read out, but it will be appended to my remarks.

I note that one of them, of course, is Allsop CJ of the Federal Court of Australia, as well, I might say, from the Chief Justice of Australia, French CJ and I have mentioned already Gageler J. All the judges of the High Court have pointed out that they unfortunately are all in Perth at the moment and cannot make it across the Nullabor in time. I also note that a number of the former magistrates have sent apologies, too. Although I notice the longest serving magistrate, former Magistrate Nicholl, has managed to get here today, and it was very good to see him.

When Miles CJ retired, his Honour presented the court with lace jabot to be worn on important occasions. His Honour requested that it be presented to myself, as his successor. I was going to wear it today, but it does not quite fit

the décor. But in the tradition initiated by Miles CJ, I ask the Registrar to take this jabot and pass it on to my successor, her Honour, Judge Helen Murrell. Her Honour's interests include yoga, surfing and swimming. Clearly, opportunities for surfing are limited in this Territory, but I do look forward to the judicial yoga classes which will no doubt benefit those colleagues I leave behind. With that jabot comes great responsibility, but I am confident her Honour will shoulder that responsibility ably and enthusiastically.

Those of you who have heard me speak in the past, and I believe that would include most of the bench, bar table and gallery, would have had the pleasure of hearing me discuss the need for a new court building. It was christened, "the Chief Justice's lament." But it was also a focus of former Miles CJ during his term. I promised to take up the cause on 31 January 2003 at the ceremonial sitting to mark my swearing in as Chief Justice. On that day, I made a commitment to the former Chief Justice that I would endeavour to see a new building during my term. Alas, like Miles CJ, my lobbying, discussion, hopes, pleas and even threats, have not come to fruition, though some progress has been made. Indeed, we have been given indicative plans for a new court complex.

We had the pleasure of celebrating the 50th anniversary of the opening of this building. It perhaps was not an occasion that the builders, designers and initial users of the building would ever have envisaged would be celebrated, however,

we have done our best with what, in 1963, was a state of the art building. The preliminary plans which we have seen for the new court building are definitely a step in the right direction. It is also noteworthy that the current proposal is to retain as its central feature this very building, albeit internally refurbished.

Reflecting on the pride once felt in Canberra at the first sitting in this court brings hope that we can once again be a leader in court architecture. A new building is crucial for the court properly to discharge its role in the public interest. I eagerly await the momentous occasion, to be celebrated when the ACT Supreme Court holds its first sittings in the refurbished building, and I hope that I will still be in a condition fit to attend.

I urge my successor, soon to be Murrell CJ, to continue the quest and ensure the planning progress is inclusive of those who best understand the day to day processes of the court, and furthermore, to ensure that a well considered plan is implemented for continuing the business of the court during the construction process. Recent emails from my colleagues reassure me that they, too, will take a close interest in the details of the project.

Just as I hope for a new building, I also hope that the court will continue to implement new measures to increase efficiency and I repeat what is perhaps considered to be another Chief Justice's lament, and restate my belief that the appointment of a further resident judge of this court is, or soon will be, required.

Despite recent data which you have heard about, indicating that the court is increasing in efficiency and that the workload has diminished.

This increased efficiency is the result of measures put in place through collaboration between judges, court staff, the department and the profession. I include in that the docket system and the court's blitz on the court's backlog, last year as well as this year. That should be celebrated. However, it is important to consider new and more permanent solutions to decrease the backlog. I suggest that is possible, though I have not done the sums myself, that the costs involved in appointing visiting and additional judges go some way towards funding the cost of a permanent judicial appointment.

Indeed, as Professor David Biles has pointed out, the prompt dispatch of the court's business saves both government and private expenditure. I hope that within my successor's term a fifth resident judge will be appointed to this court to ensure effective and efficient administration of justice in our growing jurisdiction. It is better to have some excess of capacity, rather than be struggling to keep up.

I would not wish to leave without mentioning the over representation in the criminal justice system of young people, people with mental illness and our Indigenous people. I am heartened that these issues are receiving proactive

attention. That is good. We do need solutions, however it is not the time or place now to explore those issues. I simply urge that they be given priority. It will benefit all of us if that is done.

Finally, I share my vision for a shift in the governance of this court. I hope that the government will continue attempts to enact the 2005 recommendation of the ACT Auditor General to, and I quote:

“Establish a governance model for the ACT law courts and tribunals and courts administration that provides greater administrative independence and hence better alignment of court’s responsibility with public accountability.”

It was noted in a 2010 follow up that whilst some recommendations had been implemented, and I quote again:

“There was no formal discussion or consideration of any future model of court governance that may provide greater administrative independence and better alignment of court’s responsibility with public accountability.”

I believe that greater judicial independence will ensure that the judiciary is more responsible for its own governance which in turn is likely to promote greater efficiency and responsibility. That was certainly the experience in Ireland, and I

understand that the Attorney is not dismissive of that proposal at all. It is a matter of evolution, I think, rather than sudden movement.

In my 23 years on the Bench, I have witnessed vast development and growth in this jurisdiction. I look forward to observing further progress, albeit from a distance.

Again, I thank you all for your kind words, and for the attendance of so many familiar faces today.

And for the last time, this court will now adjourn.

APOLOGIES:

The Hon Dr K Crispin QC and Rev P Crispin

Mrs P Miles

The Hon Justice Marshall

The Hon Justice North

The Hon Justice Bennett AO

The Hon Justice Lander

The Hon Justice Dowsett

The Hon Justice Edmonds

The Hon Justice Besanko

The Hon Justice Mansfield OAM

The Hon Justice Buchanan

The Hon Justice Jagot

The Hon Justice Foster

The Hon Justice Gilmour

The Hon Acting Justice Duggan and Mrs Duggan

The Hon Acting Justice Martin and Mrs Martin

The Hon Chief Justice French AC

The Hon Justice Hayne AC

The Hon Justice Crennan AC

The Hon Justice Kiefel AC

The Hon Justice Bell

The Hon Justice Keane

The Hon Justice Gageler

The Hon Chief Justice Allsop AO

The Hon Justice Perram

Ms Katie Gallagher MLA

Senator Kate Lundy

Mr J Gleeson SC

Mr Larry King

Ms Vicki Dunn MLA

Magistrate Dingwall

Magistrate Boss

Ms Linda Crebbin

Professor Peta Spender

The Hon A Neaves

The Hon K O'Leary

Mr Jon White

Mr Tony Negus

Mr Rudi Lammers

Prof Stephen Bottomley

Ms B Mitcherson

Dr Helen Watchirs

Ms Sandra Georges

Mr Andrew Taylor

Mr & Mrs Kep Enderby QC

Mrs J Circosta