

**Speech delivered by Chief Justice Higgins
on the occasion of the retirement of Justice Crispin
on Wednesday 10 October 2007**

I warmly welcome our guest of honour and Mrs Crispin, and the Crispin family. I welcome the judges who are present today, particularly Chief Justice Black of the Federal Court, and former judges the Honourable Mr J.A. Miles and the Honourable Mr J. Gallop. It is a great pleasure to have them with us today. Magistrates, Members of the Legislative Assembly, Practitioners and their respective carers, staff members, ladies and gentlemen. I acknowledge the traditional owners of this land, the Ngunnawal People.

I also wish to acknowledge the apologies of those unable to attend this ceremonial sitting: their Honours the Justices of the High Court, Chief Minister Jon Stanhope, his Honour Justice Spender, the further additional judges of this Court, his Honour Master Harper, former Master Alan Hogan, Registrar Hugh Jorgenson and Mr Damien Bugg.

His Honour became the fourteenth resident judge of the Supreme Court of the Australian Capital Territory on 29 September 1997 after a short period as an acting judge. He became the founding president of the ACT Court of Appeal in 2001. His Honour retires from this Court having held the title of Chairperson of the ACT Law Reform Commission and the ACT Criminal Law Consultative

Committee, and holding the title to a silver Porsche Boxster. Which goes to show his Honour has no intention of slowing down on retirement.

His Honour's time at the bench has been distinguished by many meaningful jurisprudential contributions. However, his Honour built his legal career from more humble origins. His Honour grew up in South Sydney and was called to the Sydney Bar in early 1973 after completing his Barristers Admission Board course in late 1972. This was against the better judgment of his friends. Despite his dearth of experience and contacts, he "eventually", as he recounts, "established a toehold accepting briefs more astute counsel had dodged" and he quickly "specialised in any case [*he*] could get". By doing so, his Honour built a bustling Sydney practice and had many notable clients, including victims of the Granville train disaster. One particularly memorable client – so I am informed - was a doctor who wished to erect a tennis court, pool and croquet field on his roof.

In 1979 his Honour moved to Canberra. He did so in search of the rural lifestyle and, to quote his Honour, to "spend more time with his children who came to regard him as the man who visited their mother on weekends".

In 1986-87 he represented Lindy and Michael Chamberlain at the Morling Royal Commission that exonerated the Chamberlains in relation to the death of their daughter, Azaria. He took silk in 1988 and went on to represent former

patients of Chelmsford Private Hospital at the Royal Commission into “deep sleep therapy”. During the Royal Commission, and I quote his Honour (with slight amendment for emphasis and flow), “his criticism of a senior bureaucrat ... earned him the distinction of becoming only the second QC in Australia to be charged with professional misconduct due to the perceived ferocity of his submissions. However, the allegation was dismissed and he survived to professionally defame others.”

His Honour also represented the Wik and Waanyi peoples in the first Wik native title decision handed down by the Federal Court. His Honour became the ACT’s first Director of Public Prosecutions in 1991, holding that office until 1994. He was also President of the ACT Bar Association in 1996 and 1997.

It was at this point, in September 1997, that his Honour accepted an invitation to permanently move from barristers chambers into judges chambers at the Supreme Court. In his decade at the bench, his Honour has made many significant contributions to the Court. His rapturous wit is well known, as too his readiness to speak his mind and to push boundaries to effect change. This was evident at the announcement of his appointment to this Court, when his Honour took the unusual step of speaking to the media with then Attorney-General Gary Humphries. It is good to see former Attorney General Humphries here today.

Not even a chambers bursting with taffeta could quell his Honour's enthusiasm for the law or judicial office. That is a reference to his Honour presiding over the now infamous Abbey Bridal and "Real Life" defamation case near the end of his first year as a resident judge.¹ This unhappy union – that is, the Abbey Bridal case - survived 3 associates and produced a 138-page judgment. For some 16 months, his Honour's chambers were transformed into a makeshift bridal factory as the parties tendered wedding dress after wedding dress. Not unsurprisingly, a suggestion emanated from his Honour's chambers that the hiring out of the bridal gowns for weekend weddings would cure and assist the lean Supreme Court budget.

It was also at this time that representatives of the Aboriginal tent embassy came before his Honour seeking an order nisi to compel the Registrar of the Magistrates Court to issue warrants for the arrest of Prime Minister John Howard, then Deputy Prime Minister Tim Fischer, Independent Senator Brian Harradine and then One National Leader Pauline Hanson. The issuance of those warrants was to "in effect facilitate the prosecution of those people on charges of genocide."² I make no comment as to whether his Honour harboured any desire to issue the warrants, albeit on different grounds, but his Honour ultimately dismissed the application. However, he did take the unprecedented

¹ *Steiner Wilson & Webster Pty Limited t/as Abbey Bridal ACN 003140823 v amalgamated Television Services Pty Limited ACN 000 145 246 and Colleen Blake* [1999] ACTASC 123 (18 November 1999)

² *In the matter of an application for a writ of mandamus directed to Phillip R Thompson Ex parte Wadjularbinna Nulyarimma, Isobel Coe, Billy Craigie and Robbie Thorpe (Applicants), Tom Trevorrow, Irene Watson, Kevin Buzzacott And Michael J Anderson (Intervenors)* [1998] ACTSC 136 (18 December 1998) at 61 per Crispin J.

step of setting up court around a campfire at the tent embassy to hear Aboriginal elders speak of Aboriginal law and systems of belief.

His Honour's readiness to critique injustice, and his perseverance in doing so, has reaped many rewards for this Court and for the community. Not least of this was his Honour's role in developing the jurisprudence of this Court in line with human rights and social justice. One of the most noteworthy examples of his Honour's critique of injustice is his outspokenness against the treatment of persons suffering from mental illness or brain injury within our criminal justice system. His Honour voiced well-founded concerns as to the use of the criminal justice system, rather than the mental health system, to address the behaviour of persons suffering from mental illness or brain injury. His comments in *R v Bailiff* [2004] ACTSC 42 (9 June 2004) eloquently frame his concerns and exhibit his strong sense of social justice (at 45):

More fundamentally, a compassionate and caring society should be able to find means of adequately managing mentally ill people without constant resort to the criminal justice system...At the risk of belabouring the obvious, people cannot be deterred from distorted patterns of thought due to brain damage or mental illness and, if the underlying condition is not addressed, deterrence alone will be unlikely to substantially reduce the risk of similar behaviour in the future.

In addition, his Honour's forthright comments on deficiencies in the law relating to fitness to plead provided impetus for amendments to the *Crimes Act*

1900 (ACT). His Honour's remarks on the difficulties and inadequacies of deferring assessment of an individual's fitness to plead to the Mental Health Tribunal were heeded by the Territory Government, and legislation was introduced to place determinations of fitness to plead in the hands of the courts.

Another of his Honour's major contributions is his presidency of the Court of Appeal. His Honour was Chairperson of the ACT Law Reform Commission when it recommended the establishment of a separate intermediate appellate court as a division of the Supreme Court. It was thus fitting that his Honour was appointed its first president. His stewardship of the Court of Appeal has been critical to the administration of justice in the Territory.

His Honour's dedication to social justice and public critique is founded in his strong moral and ethical framework. His Honour's longstanding interest in ethics and the practice of the law formed the basis of his PhD thesis entitled "Ethics and the Advocate", a title that may seem oxymoronic to some.

His Honour has also penned two books - one on divorce, the other on the Chamberlain litigation. His writings on law, ethics and expert evidence are highly regarded, so too is his work as a librettist on his daughter's award winning opera composition. His Honour's skills as a librettist do not come as such a surprise when you read his judgments – or hear his florid ex tempore judgments – and you will note his accomplished command of the English

language. Here is but one splendid example in the form of an opening paragraph to a judgement (extracted from *Owen Hughes & Margaret Hughes, Anne Gordon-Hamed v Australian Capital Territory Planning and Land Authority and Paul & Silvana Bisa* [2004] ACTSC 132 (17 December 2004) at 1):

At least in pre-feminist days it was often asserted that an Englishman's home was his castle, but in contemporary Australia any budding Arthur and Guinevere who take this concept too literally are likely to find that their neighbours are not enchanted by the prospect of living next to a castle.

Another example is his Honour's judgment in *Stanley Stergiou and Ekaterine Stergiou v Citibank Savings Ltd* [2005] ACTCA 15 (3 May 2005). In this case the respondent sought to take possession of the appellants' house on the basis that the appellants had failed to comply with their mortgage obligations. The parties had been in battle for a decade by the time the matter came before his Honour. His Honour colourfully captured the saga, and I quote: "The proceedings have been protracted, tortuous and attended by a comedy of errors sufficient to inspire the producers of "The Castle" to consider making a sequel" (at 1). His Honour – not shy to employ literary techniques to enliven a factual scenario – went on to describe the battle weary self represented first appellant as follows (at 18-19):

He appeared a small, tired, sick David forced to fight a corporate Goliath without any sling or stones. Yet, unexpectedly, he launched one legal missile. He handed up an

historical company extract provided by the Australian Securities and Investments Commission that revealed that Citibank Savings Ltd [*the respondent*] had been deregistered on 13 June 1996.

Rather significant given these proceedings took place in 2005.

Of course, his Honour's chambers better resemble a much needed staff common room than a castle. The staff of the Supreme Court will attest that the door to his Honour's chambers was always open, and his Honour could often be heard vividly and audibly recounting war stories to a captive audience of associates.

On a personal level, may I say I will miss the daily contact, the wise counsel, the personal friendship, and the infectious laughter of my brother Crispin.

Finally, I would like to pay tribute to Pamela Crispin and the Crispin family. Nobody could undertake this office without the ongoing support of a spouse and family. Pamela has been all of that to his Honour and more. I can say that the Crispin children - Judy, Stephen and Tim - have all been a source not only of expense, but of pride in their achievements.

Join me now and say, not farewell, but good wishes and many happy years together to Pamela and Ken Crispin.