

**SPEECH GIVEN BY
CHIEF JUSTICE HIGGINS**

**SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**

CEREMONIAL SITTING

CANBERRA

FRIDAY, 31 JANUARY 2003

HIGGINS CJ: First of all may I on behalf of the court express my deep sympathy to those who lost loved ones, suffered injury or loss, during the terrible and tragic events of 18 January 2003. We also pay tribute to the courage and effort of those who strove to save lives and property.

I would also like on behalf of the court to acknowledge the Kamberi and Ngunnawal peoples whose country it is that includes the Australian Capital Territory. I am, and this court is, honoured by the presence of traditional owners and elders of the Ngunnawal peoples.

I thank Mr Stanhope not only for his kind words, but also for the fact that it his signature and that of Mr Quinlan which appear on my new commission. Both have been longstanding friends and I look forward to a fruitful and co-operative association with Mr Stanhope and his government.

It is the first time I note that not only the Chief Justice, but also the Attorney-General and Chief Minister of this Territory, have been ANU graduates in law. Although Mr Gary Humphries, who is present today, was the first Chief Minister to have been a graduate of the ANU law school.

I thank the learned Solicitor-General for the Commonwealth, Mr Bennett QC. It's always pleasant to be the recipient of his advocacy, the more so when he engages in that hyperbole for which he is justly famous. As to his submissions concerning Victorian football teams, I can only say in my defence that at least it's better than barracking for Collingwood as does the Chief Magistrate.

And I can assure him that my degree is from the ANU, not the University of Melbourne. I started at the ANU law school in the first year of its independent operation as an institution of the Australian National University and after it had ceased to be the Canberra College of the University of Melbourne. So I never, ever, notwithstanding the attractions of it, graced the halls of the University of Melbourne.

And as for belly dancing, may I correct you? It was Saunders & Co that put on the belly dancer. And I seem to recall others, including Mr Adrian Robertson, showing their skills as well.

CRISPIN J: How about a demo?

HIGGINS CJ: Mr Robertson is only too happy.

Next I thank the president of the Law Society, Mr Dennis Farrar, who was himself a victim of the terrible fires to which I have referred. Now whilst not the first justice to have held office in the Law Society, Gallop J held the exalted office, Mr Farrar, which you now hold, I'm certainly the first Chief Justice to have held office in the Law Society being, as you mentioned, a vice president. And I can say too that if my singing talents

need recognition I suppose I can become a singing justice, it's better than being a singing detective.

And may I say also by way of reminiscence that the former Chief Judge and the former Chief Justice before Miles J adorned the walls of the court, and I have had the privilege of appearing before all of them as a practitioner.

And it's true that I am, it seems, to be the last resident judge of this court to hold a commission on the Federal Court of Australia. But let no one believe that this will lessen our close association with the Federal Court. Of our nine other judges eight are judges of the Federal Court. Miles J I might add has a commission on this court as an acting judge and has only recently retired as a federal judge.

I am hopeful that the ACT executive will invite other members of the Federal Court to accept further commissions as additional judges. My federal and ACT Supreme Court colleagues, Whitlam, Madgwick, and Gyles Js offer, perhaps uncharacteristically, silent testimony to that ongoing relationship. And I'm most happy to welcome them here today.

Next I thank the president of the ACT Bar Association, Mr John Harris, who himself is not only an ANU graduate, but also a graduate of St Edmonds College, another home-grown practitioner. The challenges of course of the office are great, I acknowledge that, Mr Harris.

One challenge of which I was but recently notified is that as Chief Justice I will be a member of the Council of Chief Justices known throughout the lands as the great council of chiefs. I'm also informed that a further challenge attends membership of that august body, namely that the most junior chief justice is to take the minutes.

This court is not so old as many others, not even the Northern Territory Supreme Court which was established in 1911, but it does, Mr Harris, predate the Federal and Family Courts. It was founded on 1 January 1934 pursuant to an Act passed the previous year, first sitting at Acton House on 12 February 1934. When I first became aware of it in 1960 it was sitting at premises of the patent office, now known as the Robert Garran Offices of which Mr Bennett is no doubt familiar. I must say on a note of warning all previous premises before then which had been occupied by this court have been, or as with the Hotel Acton, are about to be demolished.

This building was opened with due ceremony by the then prime minister, Sir Robert Menzies, in 1963 and the court first sat here on that day which seems chosen for all Commonwealth occasions, 9 May in that year. There was then no resident judge, that is not until the honourable Russell Walter Fox was appointed in July 1967. There had not been one then since 1960, so any suggestions about delay in appointment of judges isn't so great these days as it then was. Fox J became chief judge of this court on 18 January 1977. Blackburn and Connor JJ were the Indians.

On 3 November 1977 Fox CJ having resigned that office, Sir Richard Blackburn became Chief Judge, a title amended to Chief Justice on 5 May 1982. Blackburn J's achievements and attainments are well known, and indeed reiterated in the memorial lecture sponsored annually by the Law Society. I have already noted and acknowledged my predecessor's contribution to the law and to this territory. His portrait will soon grace these walls, no doubt to remind me of his fine example should I be tempted to stray from the paths of judicial righteousness.

I also acknowledge the presence today and the former service of the Honourable John JA Kelly and John F Gallop. Both are former leaders of the Canberra Bar and fellow practitioners of mine, and from each of them I've learnt much.

As Coldrey J recently remarked, "Behind every successful person is a profoundly astonished spouse". Though it may be trite, it is true that I have relied on and received the utmost love and support of my wife Anne, and yes, I did meet her at the Manuka pool. I'm also gratified by the presence and support of those of my children, Gareth, Kieran and Brendan, and my daughter Kathleen, who have not fled the country as my son William has with his wife Rebecca, the latter therefore being unable to be here. I'm also gratified by the presence of my grandchild, Brendan, and his mother Lindl.

I am pleased to welcome my former partners in legal practice, Faulks J of the Family Court, Dennis Martin of Sneddon Hall & Gallop solicitors - free plug, Dennis - and my brother Michael, the latter with the other members of the Higgins legal dynasty, my sister-in-law Fay and my nephew Rowan.

There is much that needs to be done in the future - the needs when funds allow for the replacement or augmentation of the court facilities is evident. This building, as I've often remarked, was state of the art when opened in 1963 when there were but two magistrates and one or two visiting justices at a time who would sit here.

It is now inadequate for the needs of the time, not only for ceremonies such as this, but even for jury selection. Both occupational health and safety and security standards are well below what's now required.

In a 1966 report on the Irish legal system it was noted, "The administration of justice is a solemn act of government. It should take place in dignified, suitable and fully equipped buildings."

The model for the administration of the ACT courts, cheaper to remedy though it is than to obtain a new building, has also fallen behind world's best practice. The same report concluded:

"The civil servants who work for the Minister for Justice quite reasonably can see their first responsibility as being to the Minister, not the judiciary. It's important in order to preserve the independence of the judicial function that on judicial issues the court staff be responsible to the court".

In that context, it's pleasing to welcome Mr Bruce Kelly, our new Sheriff and Court Administrator. I look forward to working with him and with the Secretary of the Department of Justice and Community Safety, Mr Tim Keady, to further that objective to which I've referred.

It is in my view that the administration of justice, whilst independent of the Executive in the making of judicial decisions, should be pursued in a spirit of co-operation on matters of judicial resources and administration. The independence of the judiciary does not require isolation from the Executive.

It's also I believe important that the court, within the constraints that are imposed by judicial independence, engage our legislators so that they become more appreciative of the judicial role, its place and importance, as we should also understand and respect the role of the legislature.

In that respect I note the presence of the Speaker of the Legislative Assembly, Mr Wayne Berry, and thank him for his attendance. In this age it's also necessary for the court to explain to the wider community its role and function, again while preserving the independence of the judicial role.

The judicial role is not an easy one. Competing interests need to be resolved, sometimes to the satisfaction of none of the parties, sometimes to the satisfaction of one party only, and more rarely, to the satisfaction of both sides, even those who did not receive the result they sought to obtain, or to avoid as the case may be.

The objective is to work to understand the competing issues, offer a fair hearing to all parties including, for example, victims of crime as well as offenders, to take a longer-term view of the public interest and that which may temporarily excite public commentators.

Contrary to the view expressed in the Canberra Times editorial of 27 December 2002, I do not take the view that the appointment of a home-grown judge reflects a lack of status or respect for this court outside of this Territory.

I've adduced two strands of evidence to support that conclusion. First are the expressions of opinion to the contrary from the finest judges and citizens of this land, both inside and outside the legal profession, and both in this court today and on other occasions, and the second is the quality of my colleagues in this court.

My brother Crispin's scholarship and intellectual attainment have been recognised by the University of Canberra in awarding him a Doctorate of Philosophy, my brother Gray as a former Solicitor-General of the State of South Australia, in that capacity grappling with and arguing before the High Court on matters of great complexity and importance.

My current nephew, as Master Hogan described his relationship to the judges, and soon to be brother Connolly was formerly Attorney-General for this Territory and before then a government lawyer of great learning and intellect. I'd also draw attention to the quality of the additional judges of this court, all of whom have been appointed to the Federal Court, one of the most prestigious courts of this nation. I'm proud to be appointed to lead such a talented and respected court.

Finally, I want to address and acknowledge the law schools and legal profession of this Territory. We are now an independent and mature legal profession. We have shown that we can not only provide the legal services required, but also the judicial officers, both magistrates and judges, Family Court and Federal Court, needed to do justice in this Territory.

I'm proud of this legal profession. It is, as a body of men and women, one which strives to advance the interests of its clients but adheres as this court insists, but not merely because of that, to the highest principles of ethical behaviour. It's especially pleasing that this profession is appreciative of the need to ensure, through the Legal Aid Office, and pro bono schemes, that all who truly need legal services can obtain them.

In addition and finally, I commend to you and urge you to obtain and re-read my predecessor's final speech on 30 September last, particularly concerning the role, history and function of this court. Jeff, I've mentioned the building, I'm wearing the jabot, and I can only hope I'll be a worthy successor to so distinguished a predecessor.