

TRANSCRIPT OF PROCEEDINGS

**SUPREME COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**

CEREMONIAL SITTING

**ON THE RETIREMENT OF THE HONOURABLE
CHIEF JUSTICE TERENCE HIGGINS, AO**

CANBERRA

10.07 am, FRIDAY, 13 SEPTEMBER 2013

THE ACTING REGISTRAR: Ceremonial sitting to mark the retirement of the Honourable Chief Justice Terrence Higgins from the Supreme Court of the Australian Capital Territory.

5 HIGGINS CJ: Thank you, Mr Acting Registrar. Well, before we commence the proceedings by calling on those at the Bar table, I understand Refshauge J wants to say a few words.

REFSHAUGE J: Thank you, Chief Justice.

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This is a very significant occasion, for it marks the retirement of our first home-grown Judge, our longest serving Judge, and a very popular member of this Bench. Your Honour was very much home grown, having finished your schooling in Canberra, undertaking law school studies at ANU, starting in the first year of its independent operation from the University of Melbourne, completed articles with Canberra solicitor JJ O’Neil, and then establishing your own firm, Higgins & Faulks, both of the partners of which attained high judicial office, as we note with pleasure the presence here of Faulks DCJ. This is a remarkable achievement for a moderate sized, if not necessarily modest, Canberra firm, later to become Higgins Faulks & Martin.

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Although your Honour’s first admission in New South Wales in February 1967 was well after this building was opened 50 years ago, it was still before the first landing of a man on the moon, an event that was made very significant as a milestone by you and then by Gageler J at the Bench and Bar Dinner this year.

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Your Honour has spent much of your practice in this building, however, for it housed the Magistrates Court, where your Honour cut your teeth in litigation and advocacy, as well as the Supreme Court, which, with some substantial structural and operational challenges, it continues to house where your Honour has spent much of your working life.

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Your Honour has been here in many guises – Terry Higgins, Solicitor; Terrence Higgins, Solicitor Advocate; Terrence John Higgins, Barrister; TJ Higgins QC; Higgins J; Higgins CJ and now, of course, Higgins CJ AO Ret’d. Your Honour’s stellar career will, no doubt, be outlined by other speakers today, so I will make only some general remarks.

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Your Honour had been, in your solicitor’s practice and at the Bar, a champion of the vulnerable, the oppressed and the disadvantaged, doing much work in criminal law, administrative law and personal injuries work. Your Honour also had a very significant defamation practice in the days when this court was the court of choice for that cause of action.

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5 For some years, your Honour had the Australian Law Reform Commission fully occupied in trying to plug holes that your Honour managed to find in the infant breathalyser legislation. Your Honour also advanced very significantly the importance of natural justice in administrative decision making as a mechanism to enhance the quality of such decisions and protecting those dealing with the government.

10 Your Honour even managed, in the course of acting for an Aboriginal activist associate with the Aboriginal Embassy, to persuade Fox, Blackburn and Connor JJ to declare as inoperative the Trespass on Commonwealth Lands Ordinance 1972, putting at risk the whole of the ACT statute book, despite the strong opposition of Dennis Needham QC and Simon Cheller, both later distinguished jurists. The outcome required
15 urgent legislative action.

Your Honour also later helped Connor J rediscover and apply the common law power of binding over used in that case for women who attempted to
20 disrupt an Anzac Day parade.

Your commitment to justice and human rights translated to the Bench and was evidence in your Honour's judicial work. Even before the Human Rights Act, you relied on Magna Carta to ensure that protection orders were not made by default. As the Solicitor-General David Bennett QC remarked on your Honour's swearing in as Chief Justice:
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“On the Bench your Honour's continued humanity and compassion for the battle of the disadvantaged, as well as clear simple English, have been a feature of your judgments. In delivering judgments your Honour has proved a master of the short sentence in both senses of that term.”
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When, as Director of Public Prosecutions, as I then was, I heard that, I was taken by that last part, as you can imagine. I do not think my acquisitions session to the Bench on which you sit has changed that.
35 Indeed, some may say I have joined you in that endeavour.

As we know from the wide jurisdiction of this court, you have delivered judgments in a wide variety of matters, and your many judgments, which the Library have bound into 30 volumes, which you can reread in your retirement to fulfil any idle moments, have been reported in a wide range of authorised and specialist reports. Decisions of your Honour's, such as *Quirk v Bawden*, where your Honour wrote for the Full Court, and the defamation cases in which your Honour excelled will be cited for a long
40 time to come.
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5 When your Honour became Chief Justice, you were the only resident Judge that held a dual commission to this court and to the Federal Court of Australia. You have used that bond to cement the relationship between our two courts, and I know that this has been of great benefit to this court. This is evidenced by the invaluable contribution made by the additional judges who assist the court, and some of whom honour us by their presence here today. It is a connection that is hoped can be continued.

10 As Chief Justice, your Honour has provided over significant changes in the way in which the court conducts its business. In 2004, there was a significant overhaul in criminal procedures which required earlier articulation of the prosecution case and earlier case management. In 2006, a completely new set of court rules was made, which derived much from
15 the modern approaches to litigation and case management from reforms in Queensland and New South Wales especially. The ACT reform was largely presided over by your friend and colleague for too short a time, the late Terry Connolly J.

20 More recently the docket system has been introduced in a more extensive form than in any other court in Australia. Your Honour had, of course, experience of that system as a Federal Court Judge, holding dual commissions in this and that court for the length of your whole judicial career.

25 Your Honour has been something of an iconoclast, though committed to the rule of law and the principles of justice. Thus, in your term, we have dispensed with wigs and the traditional robes of office, replacing them with a contemporary robe that we now wear.

30 Your Honour navigated the treacherous shoals of intellectual property to be able to model our new robes on those used by the Federal Court, thus retaining a link with that court which has made such a contribution to this court, and continues to do so. Our robes which we now proudly wear
35 show the local colours on them, as is appropriate.

Your Honour was the first leader of the court to be the subject of a portrait painted and hung in the court, while you were still a sitting judge. Litigants, the public and the profession entering the court see your Honour
40 on the extreme left, while your colleagues on the bench see your Honour much closer to the right.

45 During your Honour's period as Chief Justice, significant reforms have also been made to the court governance. Thus, a court stakeholders forum was instituted, which you chaired and which allowed representatives of a

wide range of court users to hear about what is happening in the courts, and to have a say in issues about which they consider the court should hear.

5 A court governance committee meets regularly, also allowing the heads of this court, the magistrate's court and the ACT Civil and Administrative Tribunal to have regular meetings with the Attorney-General on matters affecting those courts and the tribunal. Despite your perseverance that important project to which you set your mind, namely an independent
10 courts authority, widely regarded as essential for the true independence of the third arm of government, has not eventuated. Your Honour cannot be accused of not trying to achieve this, and anyone who hears your admission day addresses can be in no doubt about the importance to which you attach this desirable development.

15 Your Honour has been somewhat more successful in your advocacy on behalf of the court in other areas. The state of this building, for which you often apologise on admission days and you should apologise today when we look around, when we cram friends and families of admittees into too
20 small a courtroom, many having to stand during the whole of the ceremony, have finally been appreciated and a new building, appropriate to the court in the 21st century is now being seriously considered by the government.

25 Additional judicial resources, also a recurrent theme in your representation to government, have been provided, though not in the longer-term sought by your Honour, but in a substantial way over the last few years.

30 We are delighted that Nield, Sidis AJs, of those who have assisted in this way, have been able to join us this day. Your Honour also presided over two very significant milestones in this court, the 75th anniversary of the establishment of the court for which you managed to have published a handsome history of the court and its judges by your predecessor, the
35 Hon Jeffrey Miles, who also honours us by his presence today, and the 50th anniversary of this building which, as you pointed out, predated the moon landing. These were significant events which your Honour ensured were duly recognised.

40 A particular mark of your Honour's leadership has been the strong ethic of collegiality that you have engendered amongst your colleagues. It is a happy court on which to serve, despite the inevitability of judges having strong personalities and their own independence. Though misunderstood in some quarters, the weekly judges' lunch has been an important part of the means by which that spirit is maintained and has been welcomed by
45 visiting judges, a number of whom have remarked on how worthwhile it is

and the cordiality it ensures. We have now retired to the less salubrious surrounds of the courts' ancient conference room to avoid the prying eyes of those traipsing around London Circuit, or frequenting the Lemongrass Restaurant.

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An important part of your Honour's time has been spent connecting to the community through your leadership in various community organisations, now an accepted and perhaps important part of judicial life to prevent isolation from the community, but in a restrained and acceptable way. Your long-standing involvement with the Royal Lifesaving Society has contributed immensely to that organisation, which has enhanced the wellbeing of the community and saved countless lives, not only in Australia, but through its international affiliation more widely. Your Honour's involvement in the Open Family Foundation and now Youth Care Canberra has continued and expressed that humanity and compassion to which Dr Bennett referred.

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Your concern for youth is well-known, and you have put particular effort into whatever could be done to prevent young people falling into a life of crime. This is also reflected in the very first remark made by your Honour when sworn in as the third Chief Justice of this court, expressing on behalf of yourself and the court sympathy for those who have lost loved ones or suffered injury or loss during the terrible and tragic fires that ravaged Canberra and its region in January 2003.

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The esteem in which your Honour is held by your current and former judicial colleagues is evidenced by the number of them who have made an effort to send messages of goodwill or to be here today to join in the good wishes that we all offer to your Honour for a long and fruitful retirement.

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I wish to add my personal thanks for your generous and valued support to me. I know I speak for all our current and former judicial colleagues in wishing you good health, a well-deserved holiday and as satisfying retirement as you could wish for yourself.

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HIGGINS CJ: Thank you, Refshauge J, modesty forbids me from commenting on that.

I now call upon the Attorney-General, Mr Corbell.

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MR CORBELL: May it please the court.

Your Honours, it is a privilege to be here today at this ceremonial sitting to farewell Chief Justice the Honourable Terence Higgins, AO. I want to acknowledge that we are, of course, gathered on the lands of the

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Ngunnawal people, the traditional custodians of this country and I pay my respects to their Elders, past and present.

5 It is a privilege to be here on behalf of the government to mark the end of this your Honour's substantial contribution to law and justice in the Territory. I am pleased to be able to extend thanks to the government in the company and presence of your wife, Ms Gayle Yeaman, your children and the audience representing a broad diversity of ACT courts and tribunals, the federal judiciary and the broader profession.

10 It is clear from today's attendance that you have been a constant and valued part of the fabric of the ACT legal community, as well as a trusted friend and respected colleague. You have been an advocate of the law as a tool for reform, for justice and to achieve fair and just outcomes for individuals. While we farewell you today as Chief Justice, we mark also 15 the end of your tenure as the leader of our judiciary. But I am certain it will not mark the end of your contribution to our community.

20 In recognising your achievements, I would like to start by turning back to January 2003 when you were appointed Chief Justice you had already served on this court for 13 years. On the ceremonial sitting to mark your appointment my predecessor, the former Attorney Mr Stanhope, foreshadowed your contributions. He observed that you have never feared or avoided law reform and you have always shown yourself willing to 25 explore new avenues within the law. My predecessor expressed the view that these qualities would be invaluable in your new role then as Chief Justice.

30 The decade since has proven my predecessor correct. Your appointment as Chief Justice to this court followed an illustrious career in the profession; studying law at the ANU, you were awarded the George Knowles Memorial Prize in 1962 and earned honours with your degree. Refshauge J has outlined your history already with JJ O'Neill Solicitors, after which you were admitted as a barrister and solicitor of this 35 court in 1967 and your work as a partner at Higgins, Faulks & Martin which was renamed Higgins Solicitors in 1981.

40 As the most senior member of this court, with a decade of judicial experience and decades more practical experience your appointment as Chief Justice was recognition of your contribution to the law. Your tenure has seen historic changes in the Territory's legislative framework with a leading role for this court. In 2004, the ACT became the first jurisdiction in Australia to adopt a Human Rights Act.

5 The Act enumerated the rights of this community and recognised this honourable court's role in judging whether the government has met its legislative commitments. As Chief Justice, you have overseen the integration of this Human Rights Act from the statute book into the practice of law in these courts. Your talent as a jurist has contributed to the successful and ongoing implementation of human rights law in the Territory.

10 It was during your time in private practice also that I understand you made a very significant, if perhaps unknown contribution to the family law of Australia. Faulks DCJ of the Family Court recently said in an interview that you had insisted that he be the first in your firm to get across the then new Family Law Act. The Family Court of Australia has certainly been well served by your intervention in this regard.

15 In addition to your outstanding contribution to the jurisprudence of this Territory, your leadership as Chief Justice has contributed to great improvements in the way court services are delivered. On the day of your appointment, you recognised the challenges that lay ahead in improving access to justice. You identified that the relationship between the executive and the judiciary was critical in ensuring the effective administration of justice in our city, and you emphasised that it was important for the court to engage legislators so that they are more appreciative of the judicial role.

20 You have been consistent in your proactive engagement of the executive and legislature in matters of importance to this court. Over your leadership the court has seen a number of important improvements in the provision of justice services. I am pleased that as your tenure as Chief Justice draws to a close, we can say that we have worked closely together to support this court and improve access to justice.

25 Under your leadership the court's governance committee was established to help facilitate better communication. Since its establishment in 2008, this committee has proved to be a vital tool in ensuring that the judiciary and the executive work more closely together.

30 The recent improvements in the administration of justice in the Territory are a result of this cooperation, and I want to thank you for closely with the government to achieve that. In particular, it is important to focus on the success that has been achieved towards improved case management, improved support for this court and new justice facilities.

35 The joint review of case management procedures in the court is a great example of how you led and encouraged cooperation to improve the

administration of justice. Following a joint review between the government and the court, a series of measures were implemented to improve the court's procedures. The outcomes and improvements that have followed have been possible by your continuing leadership of this court. At the time the review was commissioned, waiting times in this court were long and growing. Criminal trials were taking place more than two years after committal, and we saw a backlog increasing in the court's case load.

2010/2011 ended with 291 criminal cases awaiting finalisation for more than 12 months and this represented a peak year in both the number and proportion of long wait criminal cases over the past five years. The cooperation between the judiciary and the government in the review and its implementation, I am pleased to say, have been successful in improving timeliness.

Your advice to government and its responses to your requests have been instrumental in achieving the success that we now are starting to see. In 2012/2013, there were 92 criminal matters awaiting finalisation for more than 12 months, down from 174 in the year proceeding. A 47% reduction in the number of criminal matters older than 12 months, and less than a third of the number of cases pending for more than 12 months in 2010/2011.

Your support for the docket system, where each case is managed by a single judge is showing benefits. I welcome the news today that the average waiting time to list a hearing before a judge is down by almost half in August this year, compared to the previous year. All of these outcomes are a result of your leadership and commitment to collaboration with the executive on improving access to justice.

I know that one matter perhaps remains not yet resolved, and that is the future of this court building. You have been a longstanding and vocal advocate for a new building and I say to you and to the profession that I share that commitment to achieving a better building for this honourable court. At the 50th anniversary of this facility, I announced that the government was seriously developing option for a new Supreme Court building. The government will continue to work with the court, with your successor, in ensuring that we deliver a court truly suitable for the Supreme Court of the national capital.

It would be remiss not to recognise that whilst your tenure as a judge concludes today, a review of your commitment to community service shows that your public life will be far from over. Your contribution to this community includes your service as Chairman of Youth Care Canberra

Committee, Chairman of Supporting Canberra Street Kids, the National President of the Royal Life Saving Society of Australia, a senior member of the ACT Gaming and Liquor Authority and, of course, your commitment to the Reserve Forces Day Council and as a member of the Australian Defence Forces Human Research Ethics Committee.

All of these ongoing commitments to the community highlight your love and passion for our city, and I look forward to seeing that you will continue to make an important contribution to the life our Territory.

Today, I join all present in this court in pausing to recognise a distinguished and long career of service to justice and the law, to the legal profession and to our community. I wish you all the best in your retirement.

May it please the court.

HIGGINS CJ: Thank you, Mr Attorney.

I now call upon the president of the Bar Association, Mr Greg Stretton SC.

MR STRETTON SC: May it please the court.

When searching for superlatives to describe the Chief Justice, I decided to go to the very top. A man very experienced in hyperbole, none other than Andy Finlay. Now, when I asked Andy for a bit of, you know, an epithet or two he said that your Honour was the best thing to come out of Tasmania since Peter Hudson. Now, those who are not skilled in the Australian Rules Football will not know that Peter Hudson was a champion full forward. He came from Tasmania. He played for Hawthorn and he was leading goal kicker each and every year from the late '60s into the early '70s. And he was, in fact, so famous that when a church in Hawthorn, the local priest wanted to challenge his congregation, he put up a sign and it said, "What would you do if God came to Hawthorn." And someone put up, "Move Peter Hudson to the half forward flank."

Now, his Honour has always been true to his values and beliefs. He was, of course, as we have heard, in partnership with John Faulks and Dennis Martin. And Dennis, it is fair to say, took or had to take an interest in the finances of the firm and he would come in and he would say, "What are you doing today?" And Terry would say, "I have got this application in the High Court." And Dennis would say, "That is good." But Dennis would go to the trust account and see how much money was there on

account of costs and, you know, while Mr Robertson went and sued the Balmain Ferry over a penny there was not even a penny in the Higgins Faulks trust account, but there was his Honour off on another venture to the High Court for some poor unfortunate case he was championing.

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Now, in 1992 his Honour flirted with the dark side and found a verdict against a plaintiff in a personal injury case. The plaintiff was a Mrs Miletic and she sued her employer, the Capital Territory Health Commission. His Honour entered a verdict for the defendant. It went on appeal and the High Court set him straight, overturning his Honour's decision and ordering a retrial. His Honour never again flirted with a finding for a personal injury case. In fact he was so upset for Mrs Miletic's sake that when it came back for assessment of damages he gave her \$638,000, which was a bit of a fortune in 1996.

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Now, his Honour has had many, many important clients over the years. Prime Minister Gough Whitlam, Lionel Murphy, David Coombe, they all would flock to him for legal representation and for advice. In Chambers, it was sometimes hard to tell whether he was having a conference or a cabinet meeting. And then he started on the breathalyser legislation, as Refshauge J has referred to, and he drove a horse and cart through that legislation so magically he kept on getting acquittals and he became known in the breathalyser squad as "Puff the Magic Dragon."

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As an advocate, his Honour got many acquittals. Unfortunately, I did hear the DPP murmur recently that his Honour may have had more acquittals on the Bench than off the Bench in criminal matters, but I am sure that is just sour grapes.

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Now, in terms of longevity, his Honour holds the record as the longest serving Judge of the ACT Supreme Court and of the Federal Court, nosing out the Honourable John Gallop J by one year. But when it comes to Chief Justice, he loses by miles – literally. Jeff Miles has 17 years, and Terry is only running second in terms of, I think, 8 years.

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Now, after his Honour's rebuff in the High Court in the *Miletic* decision, there was a second and more serious rebuff when it came to choosing the colours for the stripes of the judge's gowns that they wear. His Honour pumped very hard and long for red, white and blue, being the colour of Footscray and the Bulldogs, but, as you can see, he was only two-thirds successful – he got the blue and the white but, unfortunately, not the red.

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Now, we do not know, your Honour, what you intend to do in your retirement. We cannot imagine you sitting there waiting for Gayle to come and tell you it is your turn to dust the cat for the day. As they say,

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when the hair turns grey, where there is snow on the roof, it does not mean the fire has gone out in the furnace.

5 On behalf of the profession and, the ACT community and also as a personal friend, thank you.

HIGGINS CJ: Thank you, Mr Stretton.

10 I now call upon the President of the Law Society, Ms Noor Blumer.

MS BLUMER: Thank you.

15 Your Honours, Attorney-General, members of the profession, friends and family, it is a great privilege to honour the service and contribution of Terrence Higgins CJ. I would like to acknowledge the traditional custodians of the land on which we sit today and pay my respect to their Elders, past and present.

20 Your Honour raised five children with your late wife, Ann; Gareth, William, Keiran, Brendan and Kathleen. And you have 10 grandchildren so far, nine of whom were born during your time as Chief Justice. You have also become stepfather to the five children of your wife, Gayle; Jay, Julian, Beau, Guy and Scarlett. Such a family requires enormous heart, commitment and hard work.

25 Like being a parent, being the Chief Justice is not always an easy task. One is not particularly trained for it, and no-one gives out bouquets if you do a good job; it is just expected, except perhaps with the exception of today, there are a few bouquets.

30 The resounding legacy you leave is one of compassion for the ordinary citizens that come before the court. The seeds of that legacy, as has been said today, were firmly sown in your career as a solicitor and as a barrister. For example, as was mentioned, you acted pro bono for those
35 that did not want to be conscripted to fight in Vietnam. You have always been passionate about the plight of Indigenous Australians and fought to retain the Tent Embassy at Old Parliament House.

40 Notwithstanding being born in Tasmania, you were educated here in Canberra at St Edmunds and at the ANU, and continued to have close ties with both those institutions. In fact, I am told by a reliable source that, as a judge, you were attending a function at St John's College at the ANU. At about 7.30 in the evening you were approached by a solicitor and
45 barrister who shall remain nameless – but are in this room – seeking an ex parte injunction to stop a cadet from being unceremoniously turfed out of

Duntroon without, it was alleged, the benefit of natural justice.

5 It being St John's, a suitably quiet place to deal with the injunction was found in the vicinity of the confessional at St John's Chapel. After
counsel made his submissions as to the need for the injunction and upon
your Honour being convinced that to grant the injunction was appropriate
in all the circumstances, your Honour judicially told counsel, "Now go in
peace." Perhaps your Honour had a backup calling. We are fortunate that
your devotion was instead to the law and the Territory.

10 Your Honour was a counsellor of the Law Society for 15 years from 1972
until 1987 and served as Vice-President for the last three years. You
subsequently served as Vice-President of the ACT Bar Association for
about two years until your appointment as a Justice of this honourable
15 court. A year ago you were bestowed with honorary life membership by
the ACT Law Society for your service to the profession.

20 Your Honour's contribution to the community as outlined today has been
boundless, and you have been tireless in supporting every manner of event
of opening and closing that has occurred, not to mention many the wise
words that you have passed on to new lawyers at the many, many
admissions ceremonies over which you have presided which signposted
your continuing concerns.

25 For example, in an admissions ceremony in 2005 you eloquently
expressed the concerns of many that the scope of anti-terrorism legislation
was disproportionate to the ensuing erosion of individual rights, and that
there was insufficient recognition of the importance of judicial review of
administrative decisions. In 2006, your welcome to new lawyers
30 advocated the removal of express discrimination against Aboriginal
people in the Australian Constitution. In 2007 you entreated new lawyers,
"Do not be afraid to question the tactics used by authorities. Continue to
ask those questions for, as David Hicks's legal team have shown, if you
ask long enough, people will listen – eventually." You then urged some
35 caution, "You may not get the answers you hoped to receive."

And so on down the years, you have regularly aired and traversed many
issues touching on the importance of the rule of law and the independence
of the judiciary interspersed with a recurring theme of the lamentable state
40 of the court facilities and resources. In 2008, you even kindly put in a
good word for the Law Society.

45 Your Honour, you have generously and without pause hosted the monthly
meetings between the judiciary and the presidents of the Law Society and
the Bar Association. I hope that our new Chief Justice will continue that

tradition, as it has provided a valuable place for conversation between the legal profession and the court.

5 Happy birthday, thank you for your contribution to this court and this community, and we look forward to your continuing involvement in the legal profession in the Territory.

May it please the court.

10 HIGGINS CJ: Thank you, Ms Blumer.

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.

15 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
20 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,
25 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.

30 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
35 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
40 short by judicial appointment.

Now, let me say that everything achieved in this jurisdiction in the past 10 years during my time on the bench as Chief Justice has been the result
45 of 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 collaboration and we should all take pride in what we were able to achieve in our jurisdiction, much of which has already been mentioned.

5 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
10 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
15 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
20 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
25 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.

30 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
35 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 officer and those within JACS – interesting acronym, is it not – who are involved in the administration of justice in the Supreme Court. And I’ve been honoured to share the Bench with many distinguished and intelligent
40 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.

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Now, it is an appropriate time to reflect on my life and how I came to be here, on my 70th birthday, addressing a full courtroom. 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 I was also articled to Mr Jim O'Neill as I mentioned in the firm of Crossin & O'Neill, where I worked by completing my law degree which I finished in 1966. I note that there are many ANU graduates in the 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 Gageler J, who sent an apology for not being able to be here today, the ANU has now infiltrated the High Court.

I did work 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, and has become the University of Canberra and I continue my association with that university as an adjunct professor since 2011, having been on the law school board for a number of years.

Now, when I was admitted as a practitioner in 1967, I continued to work with the firm of JJ O'Neill, subsequently O'Neill & Briggs in general practice, but mainly in the area of crime and common law. I stayed there until 1971, when I went into partnership with my good friend, John Faulks, who is now the Honourable Faulks DCJ 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 and I spent three years as a junior initially reading with Peter Shields QC before he was appointed one of her

5 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 a judge of the ACT Supreme Court and the Federal Court of Australia and have had my current commission since 2003. Now, 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 distinguish them from judicial siblings.

10 Masters Hogan, Connolly, Harper and Mossop. I shared the bench with former brothers, Gallop, Crispin, the late Connolly J, and again I must pay tribute to 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.

20 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.

30 Now, I also acknowledge the visiting and additional judges and some of them are present today. We have after all 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, pitchforked 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.

40 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.

5 Now, 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.

10 But 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. But all the judges of the High
Court have pointed out that they unfortunately are all in Perth at the
15 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.

20 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 success, her
25 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
30 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
35 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
40 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.

45 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 is 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.

5 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.

10 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:

15 *“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.”*

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

25 *“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.”*

30 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.

35 All 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.

40 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.

45 **ADJOURNED**

[11.04 am]

