

# Ceremonial sittings for Chief Justice Brian Martin

On Monday 2 February, Chief Justice Brian Martin was sworn in at the Supreme Court of the Northern Territory in Darwin and on the Wednesday ceremonial sittings were held in Alice Springs. Various people took this opportunity to welcome the new Chief Justice and excerpts from the speeches are included below.

Northern Territory Attorney-General Dr Peter Toyne said: "The Northern Territory, like South Australia, has a tradition of holding a special sitting to welcome a new Judge to the Bench. Your Honour would be well aware it is customary in the introduction to reveal some personal details about the newcomer."

"This tradition not only demonstrates the wide ranging experience that a new judge brings to the judicial office, but it also reinforces the view to all of us, that judges are in fact, human."

"Your Honour was educated at Adelaide High School before studying law at the University of Adelaide. You were admitted to practise in 1970. You began your career in the firm of Wallmans & Partners. The Crown Prosecutor at the time, now Duggan J, saw you in court and was so impressed that he shamelessly poached you, as he put it, from Wallmans & Partners.

"In 1974, you took up an appointment as assistant Crown Prosecutor and rose quickly through the ranks to the position of Senior Assistant Crown Prosecutor for the State of South Australia in 1982. Two years later, you were appointed as Queen's Counsel. You developed a reputation as an excellent prosecutor and I am informed that you were considered firm but fair.

"In latter days of your time as Crown Prosecutor you gained extensive appellate experience in the Court of Criminal Appeal and the High Court. You were also responsible for the administration of the Crown Prosecution section from 1979 until 1985.

"In 1985, Your Honour left the Crown to begin private practice at Murray Chambers, where you undertook a variety of work including appellate work, criminal prosecutions, defence work and civil cases.



*The Full Bench: Justice Mansfield, Justice Bailey, Justice Angel, Chief Justice Brian Martin, Justice Thomas, Justice Riley and former Chief Justice Brian Martin MBE AO*

"In 1991, you were appointed Senior Counsel assisting the Royal Commission into WA Inc and you worked on that Royal Commission for about two years.

"In March 1997 you were appointed the Commonwealth Director of Public Prosecutions, a role which held into your appointment to the Bench of the Supreme Court of South Australia in 1999.

"While on the Bench, Your Honour played a leading role in the standing committee of Attorney-Generals deliberative forum on Criminal Trial Reform. With you as Chair, the forum produced a report containing 68 recommendations, which resulted in Ministers from around Australia agreeing to improve the efficiency of all of those involved in criminal jurisdiction. From my involvement in that forum commonly, known as SCAG, I can personally attest to the height of the achievement involved in getting eight Ministers to reach such an agreement; still very difficult.

"Although you have been a leading figure in the law in South Australia for some time, Your Honour is perhaps equally well known to the wider public for your exploits as a football player. From 1966 to 1972, you played league in reserves for Sturt, then became involved in

football administration and I just want to say at this point, Your Honour, that kicking 10 goals and getting dropped the next week, there is no justice in this world at all.

"You were a member of the Sturt Management Committee, chair of its recruiting committee and then a member of the Board of Management on the South Australia National Football League. You are also the Chair of the South Australian Schools Football Association Executive for a marathon 14 years.

"Whether it was in court or in chambers, on the football oval or in the back rooms of football administration, Your Honour has earned the respect and affection of those who came in contact with you. You are well known for your excellent blend of vigorous commitment and intellect. This combined with your legal experience, quick analytical skills and sound judgment, plus your knowledge of the wider world will equip you well for the challenging new role of Chief Justice.

"There are challenges awaiting you in the administration of justice over a small diverse population, living in a large area of land which makes up our Territory.

"Indigenous Territorians make up just over a quarter of our population but unfortunately significantly over

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represented in our justice system. They are also more likely to be victims of violent crime.

"There is a need for the courts to ensure that the protections afforded by our general body of law are maintained. But we also need to find ways to ensure that the aspects of customary law can be recognised where appropriate. Again where appropriate, we need to find ways for communities to have an increased input into the sentencing processes of the courts, especially in circuit courts on remote communities.

"The size of the Territory and the distances between communities, unreliable communication systems, especially in the wet season, all add to the challenge. Your reputation for good organisational ability and communication skills as well as your interest in information technology will assist you in furthering the work that has been achieved to date.

"Your Honour has the qualities to garner the respect of Territorians and I have no doubt that you will make a significant contribution to the administration of justice in our Territory.

"Your Honour, I want to take this opportunity to give you my personal undertaking that while we all know that the justices are human, that there will never be a case where the courts as a whole comes under attack, whether it be in the media or in political domain that will remain undefended by me. I give you that pledge and I want to ensure that the integrity and reputation of the court system is upheld as long as I remain Attorney-General.

"Your Honour, I trust your time as Chief Justice in the Northern Territory will be rewarding for you.

"On behalf of the government and the people of the Northern Territory I also extend a particularly warm welcome to your wife, Leigh and to Joanna and Stuart and the rest of your family. I look forward to working closely with you and wish you all the best as you enter this exciting new phase of your life.

"Just as a final comment I just want to say that the Martin family is doing very well up here. We have had the previous Chief Justice, the present Chief Justice and the Chief minister, so what more can you want."

Solicitor-General Mr Tom Pauling QC

"This is not the first occasion upon which I have been called upon to welcome or

farewell the Chief Justice and it is also not the first time I have been called upon to welcome a newcomer from South Australia. So if you permit me to be a little bit historical and give you an idea of the court in the past."

"In 1970 when I arrived in Darwin, we had but one judge, Blackburn J. He that heard the Gove Land Rights case and he had come from Adelaide. Bill, later Sir William Forster followed him and I remember very well at the first reading of a Commission which was Sir William Forster's or Bill Forster's, I note.

"At the time, after the reading, he invited us to his chambers in the Old Supreme Court building and up we went and I happened to be the first there and we got chatting and the Master of the day came in with a very warm and indifferent sherry, which he offered us a round. Which might be all right in Berri or Renmark in South Australia but it is not de rigueur here. And Bill Forster as you know was Master of the South Australian Supreme Court before his appointment and he certainly was not up serving warm sherry but we shared a very warm friendship from that day on I must say.

"The profession was very small then and with a few exceptions, very young.

"Some might have said, green. Both Blackburn and Forster JJ were very patient with us and often gave unsolicited advice from the Bench on those pesky things, the Supreme Court Rules and sometimes the advice was

preemptory in time, I must say.

"Bill Forster in a rudimentary go at case management callovers had some with the requirement that the practitioners with actual carriage of the matters appear. This did not work. I can still hear a contemporary saying, 'I don't know anything about this matter, but I undertake to have it ready for trial.' Not just in respect of one matter but reflecting a firm's whole list.

"These pious statements formed the basis for forming lists to be heard by visiting judges, who we have many of those in those days. Many of them were former Commonwealth Industrial Court judges appointed for life and who visited regularly and some of them were Dunphy, Joske, Smithers and Nimmo JJ. Sir Edward Woodward came as well. Later, after the creation of the Federal Court, they were queuing up to come to Darwin and if you have a look at the list of judges with Commissions on this court in volume 21 of the ALR you will see that there is an enormous list. This court had more judges than the Supreme Court of New South Wales.

"It was customary in those very early days to throw a party for each visit and this was usually at a house at Kahlin shared by the Master and I. We could fit the entire profession in our lounge room. The sort of lounge room would now be called 'open plan'. These parties almost bankrupted the Law Society as there were memory lapses over who had and had not paid and I think memory lapses over who went and who did not. But should there be a revival of



Tom Pauling QC, Dr Peter Toyne, John Reeves QC and Rex Wild QC address the court.

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such exuberant hospitality, such as the late lamented judges' keg, we hope that your new home in Cullen Bay, formerly Kahlin, is able to cope with the expansion of the profession since those long gone days.

"Sir William Forster became first Chief Judge and later first Chief Justice after Jim Muirhead arrived, also from Adelaide. Toohey and Gallop JJ added to the number and visitors included Brennan and Deane JJ of the Federal Court, who when sitting with Toohey J in the Full Court made counsel work doubly hard I can assure you. As we know, those three judges all went later to be members of the High Court of Australia.

"You will have noticed that Blackburn, Forster and Muirhead JJ, as well as the legendary Phil Rice were all from South Australia, as are your colleagues Angel and Mildren. Although the latter could right claim more of his life as a Territorian than a South Australian. This bias reflects our historical links with South Australia, strengthened of late by the completion of the oft discussed railway.

"You will be relieved to know that your former life at the Bar and on the Bench in South Australia is not irrelevant. Some laws of South Australia still apply here and vex the judges including the Workmen's Liens Act. That Act has caused more trouble than a 1904 Private Act which still applies, namely The Northern Territory Mining and Smelting Company Ltd's Iron Blow to Mount Ellison Tramway Act.

"I am confident you are familiar with it and I will give your associate a copy of it. I might tell you that at approximately 1:30 tomorrow afternoon, the Ghan will cross that particular tramway at Grove Hill, unless of course it is early.

"It is a pleasure to welcome you and your family to the Northern Territory and I am assured that with the passage of time your former Chief Justice in South Australia may return to speaking terms with those he considers responsible for luring you north. South Australia's loss is sure to be our gain."

### President of the Northern Territory Bar Association Mr John Reeves QC

"On behalf of the Northern Territory Bar Association, may I congratulate Your Honour on your swearing in as the Northern Territory's fifth Chief Justice and we bid you and your family a warm welcome to the

Northern Territory."

"I hope I am not being too parochial in saying that Your Honour has now become part of a unique superior court in a unique jurisdiction. This court and jurisdiction have, I believe, a number of claims to uniqueness; some tragic and some not so.

"I want to go back in history a little further than the Solicitor-General did, and I perhaps will not be quite as amusing but, in 1942, this court was, I think, the only superior court in this country to have suffered from the devastation of a world war, when the court building here in Darwin was hit during one of the 50-odd Japanese bombing raids on this city.

"About 30 years later, the courthouse was damaged again, that time by Cyclone Tracy in one of Australia's most destructive natural disasters.

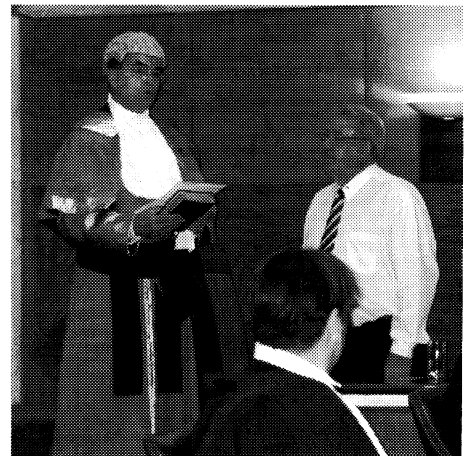
"This court has the unique misfortune to witness the shooting of counsel at the Bar table. That occurred in Alice Springs in 1975, and the unfortunate victim was Mr Tex Hughes. Fortunately, he survived. In defence of the Bar, I hasten to add that he was not the assailant's client at the time.

"This court has had to deal with some quite unique social and legal issues in its 93-year history.

"... this court has dealt with some very unique issues: the Gove Land Rights case is one that he mentioned. In more recent times, it has been called on to deal with the euthanasia case, and of course, the various mandatory sentencing cases.

"This court has sat in many remote parts of the Northern Territory. In these days of land claims and native title claims as I am sure Mansfield J will agree, that is not so unique. But I think it somewhat unique for a judge of a superior court to conduct sittings, sitting on a beer crate as Wells J did at Newcastle Waters in the 1940s.

"Mentioning Wells J raises the many unique characters who have served as judges of this court. As Mildren J records in the forewords of his book, 'Northern Territory Judgments 1918 to 1950', during his time as the sole Supreme



His Honour, Mr Ted Egan AO, swearing in Chief Justice Brian Martin

Court judge, Wells J had a somewhat stormy relationship with the then Administration and Administrator, so much so, that in March 1939, he was moved to write to the Commonwealth Attorney-General of the day, Mr Robert Gordon Menzies QC, and say, and I quote:

*The circumstances obtaining in the Territory, and particularly in Darwin are however, exceptional in that the community consists of public servants, whose mouths are closed by self-interest and definite instructions; contractors who are largely dependant on the goodwill of administration officials for the opportunity to earn their livelihoods; business people, very many of whom are more or less interested in the supply of commodities to the administration and a press which seems to depend for its news almost entirely upon censored statements issued daily by the Administrator.*

"I am confident Your Honour will find things have changed in the past 65 years and Your Honour will not have to write a similar letter to Mr Toyne, or to Mr Ruddoch, about His Honour the Administrator was leaving.

"Finally, this court has more than any other superior court, had to deal with the interface between the English common law system which is centuries old, and the Australia Aboriginal system and culture which is millennia old.

"In your time as the Chief Justice, I hope Your Honour is not for the point of view that binds, or smoke lines, or shootings in court, or even mandatory sentencing.

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## The Litigant in Person (Part 2) cont...

disqualify himself or herself.

In any private dealings counsel may have with a litigant in person outside of the courtroom, great care should be exercised. This will be especially so if “without prejudice” discussions are to be undertaken. The capacity for misunderstanding and subsequent misrepresentation is obvious. It may be difficult to ascertain the extent to which the litigant has correctly understood what is being put. Of some concern may be the extent to which the litigant misconstrues what is said. The repercussions for counsel of any misunderstanding may be serious and ongoing. In my view it is prudent for any discussions between counsel and the litigant in person to be witnessed by someone who can subsequently be called upon to confirm what took place. Where possible, notes should be kept.

The realisation that your opponent is a litigant in person is a matter that will cause you to revisit your approach to the case that you have to prepare and present. A fresh and different approach will be called for.

### Endnotes

- 1 Wentworth v Rogers (No 5) (1986) 6 NSWLR 534 at 537 Bar Review 41 at 45
- 2 Byrne and Leggat: Litigants in Person – Procedural and Ethical Issues for Barristers (1999) 19 Australian Bar Review 41 at 45
- 3 Byrne and Leggat (supra) at 46
- 4 Byrne and Leggat (supra) at 44

## Ceremonial sittings

“Nevertheless, as the Attorney has mentioned, Your Honour is certain to have to confront many unusual and serious issues, not the least being the involvement of a large number of Aboriginal people in the criminal justice system in this Territory.

“In conclusion may I observe that in one respect, this court is not unique and that is that like most other superior courts there has always been a close a supportive relationship between the Bar and the Bench. I wish to assure Your Honour that we at the Bar will strive to maintain that relationship during your time as Chief Justice.

“So once again, Your Honour, congratulations and welcome. We look forward to working with you in this unique court, in this unique jurisdiction.”

### Law Society Northern Territory President, Ms Merran Short

“It is with great pleasure that I address the court on this historic day, the swearing in of Chief Justice Brian Ross Martin. How nice it is to see so many familiar faces from the Territory’s legal profession, both past and present and the Chief Justice’s support crew, including his wife and his children, Joanna and Stuart.”

“Martin CJ is highly regarded and very well respected in the legal profession. The commencement of Brian Martin’s term as Chief Justice has been greatly anticipated and his appointment has been well received by the local profession.

“The Northern Territory currently enjoys a strong, stable and well respected judiciary which has a reputation for judicial independence. The Law Society believes that under Martin CJ’s leadership, the judiciary and the Territory’s profession will continue to thrive.

“Over the years, the Law Society has enjoyed a close working relationship with the various Chief Justices of the Northern Territory, from 1979, when Sir William Forster was the first appointee to the newly created position. The Law Society looks forward to continuing its close working relationship with the judiciary and we believe that Martin CJ

will continue the tradition of strong leadership in the courts.

“On behalf of the Law Society and the legal profession I would like to congratulate Martin CJ on his appointment and welcome him and his wife Leigh to the Northern Territory, for the start of what we are sure will be a long and happy association.”

### Director of Public Prosecutions, Mr Rex Wild QC

“I have had the pleasure of knowing His Honour the new Chief Justice over a period of some years. During the years of 1997 and 1999 when Your Honour was the Commonwealth Director we had many interesting and friendly discussions on matters of law and matters of wine and other things.”

“Your Honour, one of the memories that we Directors have of Your Honour is the fine cabinet that you had available to you in Adelaide when we came to visit you for one of our conferences. Your Honour’s cupboard was stocked as we recall with entirely South Australian wines, but that is very proper and they were all very nice drinking as I remember those that I was able to sample.

“Your Honour had an illustrious career as a prosecutor. The Attorney said that our reputation was that you were firm but fair. A newspaper report during the time of your occupancy of the role of Chief Prosecutor described you in these terms: The softest part of the Crown prosecutor is his teeth.

“Your Honour, I have been asked to speak on behalf of my office, the Director of Public Prosecutions and staff of it, many of whom are present here today and we welcome you very much to the office, we welcome your wife Leigh and family. Your Honour, if you are tough but fair, we could not ask for more.”

### Chief Justice Brian Martin

“Your Honour the Administrator, ladies and gentlemen, thank you for the warmth of your welcome to me and to my wife Leigh and I am not just referring to weather or the fact that this morning somebody chose to damage the air-conditioning in the court building. People from all walks of life have been very kind and supportive during our short time in Darwin. By your attendance

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this morning and through the more than generous words of the speakers, you have reinforced that welcoming support.”

“May I say that right now that welcome and that support is very important. Can I assure you that from this side it is scary. I have never been in a court that looks a little bit like a theatre or a concert hall.

“Politics aside, if that is ever truly possible, I am very mindful of the troubles of the past and of the importance of all of us working with indigenous communities and striving to achieve outcomes that are beneficial both to the individuals involved and to the wider communities. The goodwill that you have extended to me is greatly appreciated and is reciprocated. I look forward to meeting as many communities as possible and to working with them. Please be patient, I have a lot to learn.

“Mr Attorney, I am honoured that you and your government has sufficient confidence in me and my abilities to appoint me Chief Justice of this court. I follow a Chief Justice who has given great service over many years to this court and to the Northern Territory. It is a daunting prospect. But I hope to bring to this court and the Territory experiences, knowledge and ideas that will be of benefit.

“Mr Attorney, I particularly appreciated also your remarks this morning about the support of you and your government for the judiciary as a whole. It is refreshing.

“Of course following a Chief Justice with the same name has both advantages and disadvantages. Numerous wags have spoken already about saving costs of changing stationery. When I pointed out to the Attorney-General that the former Chief Justice has letters after his name that I do not have and, therefore there was a problem with the stationery; rather than offer me the letters, he offered me a can of white-out.

“In the same vein I should tell you that at a retirement dinner before my appointment was announced, the former Chief Justice mischievously stated that the name Brian Martin will live on. That caused a few raised eyebrows. I remain somewhat concerned, however, that the former Chief Justice is telling everyone that he is the handsome one.

“Mr President, you speak of the unique social and legal issues and of the tragedies in the background of the Territory. I must say that I think my family and I have had our eyes opened already by visits to the museum and the military museum.

“These are matters perhaps of which many in other states are not fully aware and certainly do not fully appreciate the significance of those features of the Territory’s history.

“Mr Solicitor, can I assure you warm sherry is not on the drinks list. However, I remain a little uncertain about the keg at Cullen Bay. I am afraid there is not room for the whole of the profession, as I understand the size of it today, but I have also mentioned to my friends as I will tell you, that if it is not big enough I am going to moor a tinnie and a tarp out the front. You are most welcome to take up accommodation there.

“As I said, I have a lot to learn. This includes learning about the Territory and its particular issues and about being a Chief Justice. I come to a court which has given the community excellent service and I plan that it should continue to do so.

“In speaking of that service I recognise that from time to time a proportion of the community is dissatisfied with aspects of the court’s work. In particular at times sentencing causes considerable debate, anxiety and disquiet.

“The court carries out its work in public. Criticism and at time robust criticism is to be expected and in a healthy democracy is desirable. However, it is important that such criticism be well informed and based upon a knowledge of the law that judges and magistrates must apply and of the facts of particular cases. In this area the placing of sentencing remarks on the Internet is a valuable step.

“But I have in mind that more needs to be done. I will endeavour to establish greater and improved communication between the court and the community. There is a need for the community to be given a better understanding of how courts work, of how judges and magistrates arrive at their decisions and

of the restrictions imposed by law upon judges and magistrates. The community needs to understand the dilemmas that consistently confront sentencing judges and magistrates. Inevitably, greater and improved communication between the court and the community requires the co-operation and assistance of the media. The importance of the role of the media cannot be underestimated. I hope to improve the lines of communication and consultation with the media.

“In the context of those remarks, I need to add this: I am not about to embark upon an attempt to achieve popularity. In 1979 in England, Lord Develin observed that the English judiciary is popularly treated as a national institution, like the Navy and tends to admired to excess. I doubt that that could ever be said about the Australian judiciary, whether it be the Northern Territory or another state.

“I do not seek to elevate this court into the category of a national institution, but as the Chief Justice of the High Court observed during the Centenary of the High Court, the role of the court is sustained by public confidence. On another occasion, His Honour noted that confidence in the judiciary does not require a belief that all judicial decisions are wise. But it requires, in his words: *A satisfaction that the justice system is based upon values of independence, impartiality, integrity and professionalism and that within the limits of ordinary human frailty, the system pursues those values faithfully.*

“My hope is that through improved communication and understanding of the work of the courts of the Northern Territory, public confidence in the judiciary will be maintained and improved.

“These and other issues such as the sentencing of indigenous persons, listing procedures, delays and mediation as an alternative to trials, will all require careful consideration. If I pause to reflect too long upon that list, the underlying feelings of trepidation that I assure you exist, rise rapidly to the surface and quickly overtake the sense of wellbeing which has been generated by the extent of the welcome and support I have received.

“At those and many other times I derive

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considerable comfort from the knowledge that my wife and children will continue to provide unwavering love and support. It is impossible to overstate their value to my life.

"As our children and friends will attest, my wife is in fact the more intelligent half of our union, and I thank her for choosing the vital role of raising our children and for supporting me rather than pursuing any career that would have been open to her.

"I should add that that support even extended to navigating for us when she and I competed in a 1967 Pergot 404 in a round Australia rally in 1995. With 17,000 kilometres to cover in 20 days, it took just 20 kilometres for me to countermand her instructions and to take a wrong turn. Needless to say, I was told forcibly at the time of the error of my ways and my wife's message was reinforced by other navigators that night. It was clear that as the driver I was required to obey unhesitatingly and without question the instructions of the navigator.

"Can I suggest to you that the remaining 19 days and 16,980 kilometres that we covered, gave a new dimension to the expression, 'She who must be obeyed'. Our marriage survived; it was a great experience and we look forward to more great experiences in the Territory.

"There are obviously many others who have had an impact and influence upon my life, both within the law and outside it. I am deeply grateful to my parents who gave me such a happy start on an apple orchard property at Oakbank in the Adelaide Hills, and who possessed the wisdom to

recognise the need for me to receive a higher education in order to pursue a career other than on the land.

"Those in the law who have assisted me are too numerous to mention. Our friends outside the law have been, and will continue to be an exceptionally important part of our wonderful life. I am delighted that some of those friends have travelled from Adelaide to celebrate with us.

"Today I swore an oath to do right to all manner of people according to law without fear or favour, affection or ill will. It is an oath that I will strive to carry out to the best of my ability. I will need extensive and ongoing assistance from the profession and from my fellow judges.

"Ultimately when my time has finished, I hope that I will have earned from the profession and the public the verdict that I have, during my time on this Bench and in the Territory, made a worthwhile contribution to this court and to the community which it serves."

The Attorney-General, Director of Public Prosecutions and President of the Law Society also spoke in Alice Springs, along with David Bamber from the Central Australian Aboriginal Legal Aid Service (CAALAS) and Russell Goldflam from the NT Legal Aid Commission.

While repeating many of sentiments from his speech in Darwin, the Attorney-General added: "Some of these challenges can be understood simply by contrasting the two events we have shared this week."

"The venues are 1500 kilometres apart; one in the wet tropics and the other in the dry inland. Added to this the people of Central Australia can be wild and unpredictable, so much so that the great defensive works have been put in place at Berrimah, in the outskirts of Darwin. So mighty is this defence that it is even said that as well as holding back the incursions of Central Australians but has proved equally potent in repelling those from the Barkley, Arnhem and even the peaceful throng from Palmerston.

"Your Honour, justice must be applied equally to all and that our courts have a proud history of taking justice to the wilder places of the Northern Territory. I know from your past actions and your statements to date that you will accept this challenge of the Berrimah Line and add to this history of equity and innovation in our courts."

### Managing Practitioner of CAALAS, Mr David Bamber

"Your Honour, the majority of people that will come before your court in Central Australia will be represented by Central Australian Aboriginal Legal Aid Service. On behalf of CAALAS, welcome to Central Australia. Our clients come from about 16 different language groups. Most come from remote communities and live lives to varying degrees dominated by distinctive cultures and customs."

"They are an amazing, diverse group of peoples. Unfortunately, they are also beset with problems that are, in a sense, well known, but not well understood, certainly not understood well enough for much to be done about them. They are drastically over



represented as defendants in the criminal courts, and as prisoners in gaol. Our legal system has little meaning for many of them.

“And those many find justice primarily according to their own customary law and practice. Greater participation in our legal system by Aboriginal people, other than as victims and defendants, is necessary and desirable. A move towards achieving that may be through greater recognition by our legal system of Aboriginal lore and custom, and a greater interest in and respect for their values and beliefs.

“I hope Your Honour has plenty of opportunity to get to know the desert clans and their country. If you do, I am sure you will enjoy your circuits down here and that you will dispense justice with empathy and understanding. If that leads to leniency, all well and good. Welcome and good luck.”

#### **NT Legal Aid Commission, Mr Russell Goldflam**

“Your Honour, the last time most or at least some of us at the Bar table today appeared before Brian Martin CJ was not so many weeks ago, on the occasion of the retirement of Your Honour’s eponymous predecessor. And in His Honour’s gruff way, Brian Martin conveyed, very movingly, something of the profound disappointment, despair is perhaps not too strong a word, that he felt in the face of the extraordinary challenges faced by those charged with the administration of the justice system, and in particular the criminal justice system in our jurisdiction, and in particular, our corner of this jurisdiction.”

“Those of us who have made our homes here in Central Australia may at times become a bit blasé about just how serious these challenges and problems are. But the release, just a few days ago, of the Productivity Commission’s 2000 report on government services, this week, makes for nothing less than shocking reading.

“Your Honour has assumed office in the jurisdiction where the per capita cost of administering the criminal courts, the per capita cost of administering the civil courts and the per capita cost of providing police services is over twice the national average. And where the per capita cost of administering correctional services is almost three times the national average, and that is just counting beans.

“When one starts counting people, as the Productivity Commission has done in their

report, the picture is even more depressing. Victims of assault per capita in the Northern Territory double the national average. Victims of murder per capita five times the national average. Victims of fatal road accidents per capita, often of course associated with illegal driving of one form or another, four and a half times the national average. And imprisonment rates here are three and a half times the national average.

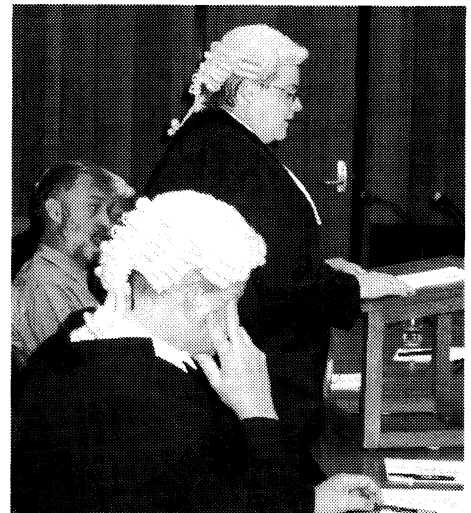
“With an unsettling symmetry I might note that the number of Supreme Court judges per capita in the Northern Territory is also three and a half times the national average.

“Imprisonment rates here are on the increase and sentences imposed by this court for serious crimes also appear to be on the rise. Mandatory sentencing for property crimes has been tried and abandoned in our jurisdiction, which is a rather curious thing given that the single offence category in which the Northern Territory lags behind the rest of the country is victims of crimes against property.

“But we stand out head and shoulders as the most policed, the most prosecuted, the most convicted and the most imprisoned population in the nation. And of course as the most criminally offensive population in the nation. The causes of this appalling state of affairs are of course by and large ones which cannot be directly remedied by Your Honour or by Your Honour’s brethren in the courts.

“Nevertheless the legal profession and the community look to our courts not just to apply the law, not just to dispense justice, although we hope that occurs on a regular indeed continuous basis, but also to provide legal and dare I say moral leadership at a time when there is a genuine and general sense that law and order is not just a political football to be kicked around at election time, but as an issue symptomatic of a profound crisis in Northern Territory society.

“Your Honour thus faces an extraordinarily difficult challenge in the years ahead. Fortunately, if we can believe what the learned Attorney and learned Director have told us about Your Honour’s background today, and I am sure we can, Your Honour is extraordinarily well equipped to take up this challenge. On behalf of the Northern



*Merran Short addressing the Court.*

Territory Legal Aid Commission therefore I wish Your Honour every success and satisfaction in meeting this challenge and I heartily welcome you and your family to the Northern Territory.”

In response, Chief Justice Brian Martin said: “I think it has been made clear by two speakers in particular this morning that learning not only about the Territory but about the particular issues affecting Central Australia is an area in which I am very ignorant; I acknowledge that. And I will need to get out and about and I hope to do so and meet the communities and hear of their problems and get an understanding of what the court may be able to do to assist.”

“I need to add, of course, that the court is the, in a sense, end user or the place of last resort. The problems cannot be cured by the courts alone. It is a community problem and it must start right at the beginning with the communities. But to the extent that I can learn about different particular difficulties and to the extent that we can, within the law as it is given to us, have an empathy, have an understanding and operate and hand out appropriate, if they be, sentences or orders that will assist in the problems, I hope that we can achieve some mileage in that regard in the near future.

“And I have no doubt that the particular issues that are confronting Central Australia and the operation of the courts here will be brought to my attention and will be given very close attention by me. I might add, Mr Attorney, without delving into any political issues, that this morning I was given a tour of this court building, and I think you might expect to hear from me shortly about some of the inadequacies that I’ve observed. I might contrast that, of course, to the court facilities in Darwin which are, to put it mildly, quite magnificent.”