

# “A Chance Discovery ... CLANT’s 25<sup>th</sup> Birthday”

Colin Mc Donald QC



*IT WAS GREAT TO HEAR FROM COLIN MACDONALD QC IN MID-AUGUST WHEN HE TOLD ME THAT HE HAD DISCOVERED SOME ARTEFACT DOCUMENTS IN HIS GARAGE WHICH REVEALED THE ACTUAL OFFICIAL FOUNDING DATE OF CLANT, IT BEING THE 22<sup>ND</sup> AUGUST 1986. COLIN WAS GOOD ENOUGH TO WRITE A PIECE CONCERNING CLANT’S FOUNDATION WHICH IS NOW PUBLISHED APPROPRIATELY IN BALANCE. JOHN B. LAWRENCE SC, CLANT PRESIDENT*

History is easily lost. This is true of history in the legal profession, particularly amongst criminal lawyers. However, accidents of history recording do occur and history sometimes throws up an unlikely historian. History often has much to do with the result of chance discovery.

I was reminded of the ironies and fragility of history on Thursday 18 August 2011 whilst rummaging amongst files, letters and photos in my garage in Stuart Park. I chanced upon several folders marked “Criminal Lawyers Association”. I opened the covers and inside I recognised documents I had forgotten about and which were, for all intents and purposes, lost to history.

My curiosity engaged, I sat in the silence of the garage reading and remembering events 25 years ago. I was reading the foundational documents of the Criminal Lawyers Association of the Northern Territory formed on evening of 22 August, 1986.

The Criminal Lawyers Association of the Northern Territory (CLANT)

has become an active association hosting every two years what has emerged as Australia’s most significant criminal lawyers’ conference in Bali. Amidst growth, change and success it is easy to overlook humble origins. As I sat there in the unprepossessing atmosphere of my garage in Stuart Park, I kept reading and looking at frozen images and postures of colleagues and former colleagues reliving notionally a chapter in the life of the Northern Territory legal profession, a chapter in my own life. In the silence, I was absorbed and confronted with the passage of 25 years, a bracket of time that had appeared to pass so quickly.

Conscious of the significance of my chance discovery and its timing, the next day I took the files to the current CLANT President, John Lawrence. After I announced the purpose of my unarranged visit to his Chambers, John transformed his concentration from the case on his desk and read with increasing eagerness and engagement. He read occasional passages out aloud. With a conspiratorial smile and a characteristic twist of his eyebrows, John declared: “The

*22nd of August 1986. I can feel a dinner coming on.”*

One of the reserve powers of the President of CLANT, the one most readily used over the years, is the power to declare a CLANT dinner. John picked up his diary and examined dates.

For my own part, I determined I would write a short account of the formation of CLANT so that there would at least be a record. History of course, is recorded by those who write and document. The corresponding responsibility of the historian is to document events and themes as accurately as possible for those whose history it is. So I will attempt to record the formation of CLANT from the documents and the jogs of memory those documents prompt with as little editorialship and opinion as possible.

On 12 August, 1986 an invitation went out to criminal lawyers and judges. The initiation was headed “*Inaugural Criminal Lawyers Association of the Northern Territory Dinner*”. The invitation was brief and to the point all typed out by the head of Criminal Prosecutions, Ray

Minahan's Secretary Lynne Zeraffa;  
it read:

The

*PLACE Sheraton Hotel Ballroom  
DATE Friday 22 August 1986  
TIME 7.00PM FOR 7.30PM  
COST \$25.00 Dinner only (alcoholic excess, within legal limits, at your discretion and cost)  
GUEST SPEAKERS Mr Jim Glissan QC and Mr Kevin Murray QC  
RSVP By Wednesday 20 August to Mr R Minahan, PO Box 1722, Darwin or phone 897533 and ask for Lynne"*

invitation was accompanied by an explanatory document which referred to a recent International Criminal Law Congress held in Adelaide where it was resolved to form the Criminal Law Association of Australia. It was perceived that there was a need for criminal lawyers and others to debate, at a national level, the plethora of issues which arise out of the daily practice in the Criminal Courts. The Criminal Law Association of Australia was to become a division of the Law Council of Australia with the States and Territories to form their own associations which would become an integral part of the national organisation. It was to be formed formally in February 1987, in the High Court with the then Chief Justice, Sir Harry Gibbs, as patron. This was the context that gave rise to the invitation. The rest is history.

An interim committee was formed to bring the association into being. The interim committee comprised Michael Palmer, Patrick Loftus, Ray Minahan and myself. Michael Palmer was a former barrister and, at that time, Police Commissioner; Patrick Loftus was a prominent private practitioner specialising in criminal law fondly known as

'loopholes', Ray Minahan was the Head of Crown Prosecutions and I was new to the independent Bar in the Northern Territory after a three year stint at the North Australian Aboriginal Legal Aid Service.

At a very successful dinner at the Sheraton Hotel ballroom (now the Crowne Plaza Hotel) attended by over 70 persons, including 60 practitioners, it was unanimously resolved on the motion of Tom Pauling QC (seconded by the then Solicitor-General Brian F. Martin QC) that there be formed a body to be known as the Criminal Lawyers Association of the Northern Territory. Guest speakers were prominent Sydney criminal law silks James Glissan QC and Kevin Murray QC. Adelaide solicitor Mr Phillip Scales, the executive director of the national body, also spoke to those assembled. Apparently, I also spoke, but I cannot remember this and there is no record of my having spoken. However, Jon Tippet QC, who was present on the night, recalls that I did and addressed attendees as "comrades", an expression that apparently irritated the late Justice Phillip Rice who was also present and who expressed his irritation in the gentleman's toilet.

Later, on 25 August 1986, I reported

to Justice Nader on the formation of CLANT. The letter to Justice Nader, inter alia, reported:

*"The Territory Association received telegrams and letters of support from all State bodies. The Territory Association is automatically recognised as a constituent body of the national Australian Criminal Law Association. The national body, whilst being fully independent, will also become a section of the Law Council of Australia. The Law Council will provide funding and administrative support. Without compromising the independence of criminal lawyers, the link with the national body viable in the future.*

*Membership of the Association is open to all criminal lawyers, i.e. those who are admitted to practice or at least have a law degree and work in the criminal law area. Judges, of course, can be members. It was decided (by majority) at the last national executive meeting that Judges were in fact lawyers! For the record, I voted with the majority.*

*Thus, with the energetic support of Ray Minahan, I have in part discharged the responsibility you reposed in me when you nominated me as the Territory delegate of the national body in Adelaide in October last year. My remaining responsibility is to deliver up to the national body an active, financially stable and vigorous body at the launch of the national Association at the High Court in February, 1987.*

*The first elections are to be held in or about February, 1988. Until that time, a regime of 'guided democracy' will prevail. For*

*the first year, I want simply to get people involved in the steering committee who are prepared to work. Thereafter, the politics can surface and the various candidates face the electorate. It seems however, until that time, that the national constitution gives me powers similar to those of General Zia in Pakistan (who, incidentally, has also postponed his country's elections until early 1988)!"*

The reference to General Muhammad Zia-Ul-Haq Pakistan's 6th President, had some historical poignancy with the reference to deferred elections.

I cannot remember whether the postponed February 1988 elections ever took place. General Zia died mysteriously in an aircraft crash on 17 August 1987. The death of General Zia was certainly not taken as any omen of the consequences for postponing elections in CLANT and all past presidents remain hearty despite regular air travel.

On Tuesday 26 August 1986 on page 4 the NT News carried this small article:

***"Criminal law group formed"***

*The newly-formed Northern Territory Criminal Law Association will work to help the legislators develop a "principled and balanced" justice system for the Territory.*

*The association was launched at the weekend at the largest gathering yet in Darwin of the legal fraternity.*

*It will hold seminars, debates, workshops and functions aimed at developing members' skills and promoting discussion on current criminal law issues.*

*Members will also participate at a national level in the*

*Australian Criminal Law Association.*

***Exactng***

*"Criminal law is the most important and probably the most exacting area of practice in law in Australia," newly-elected president Mr Colin McDonald said.*

*"We hope the association will act as a reservoir of talent for Government and other bodies to draw upon and to help develop a principled and balanced criminal justice system for Territory citizens."*

*"One of the first discussions will be on the desirability of a Territory director of Public Prosecutions.*

*Members are planning a seminar on the recently released National Criminal Code."*

In those early years there was talk of having and ratifying a constitution. There was also talk of incorporating the association, but nothing happened. Among the files, I came across two circulated versions of a possible constitution. So too, I found a letter dated 25 May 1989 on Elston and Gilchrist letterhead from the ever diligent and active CLANT member Geoff Barbaro about having Steve Southwood draft a constitution and the formation of elected officers. The letter was addressed to me with a bracketed qualification: "Mr President for Life". This title had immediate appeal amongst CLANT members. Talk of a constitution died away. CLANT was very active in the legal/political world from its inception and contributed significantly to public debate and law reform, police powers and the content of our criminal laws. CLANT was outward looking and determined. The members of CLANT wanted their organisation to be effective politically and professionally. The idea of subjecting themselves to corporate

regulation by incorporation was shunned and unwanted as an unnecessary interference.

However, the democratic history of CLANT is best described as 'patchy'. When the title "President for Life" attracted the additional description of "Amin Dada" I sensed it was time for change, appointed my successor, Jenny Blokland. Numbers were organised and, at an election of sorts, on the unanimous hands, Jenny assumed the office of president notwithstanding the absence of a constitution.

Life is, of course, filled with ironies and for a determined and driven body of practitioners as CLANT attracted over its early years, the rule of law and constitutionalism had very little to do with the internal workings of CLANT, its origins or its early history.

As I rummaged in the files, I came across many photos of colleagues, judges and friends in those time-frozen postures looking much younger and enjoying CLANT organised conferences in Bali which started in 1987. But the CLANT conferences and their historical significance are perhaps the subject matter of another article another time.

Suffice it to say CLANT outlived the National Criminal Law Association of Australia. CLANT's strength has always been its collegiality, shared values, its informality and its focus on trying to have harmonious criminal laws and criminal procedure and its courage to speak out when injustices are threatened to an unknowing and dumbed-down community.

An unlikely historian, I have written these lines on my back verandah imbibing Bali coffee accompanied by the scent of Balinese incense. I have enjoyed reflecting on CLANT's creation, the people, the events and the passions that emerged from the papers I chanced upon in the garage. An accident of history ... or was it? May the spirits of CLANT live on! ●