



[2007] HCA Trans 323

HIGH COURT OF AUSTRALIA

SPECIAL SITTING

FAREWELL TO

THE HONOURABLE JUSTICE IAN CALLINAN, AC

AT

BRISBANE

ON

THURSDAY, 21 JUNE 2007, AT 9.31 AM

GLEESON CJ: Mr Daubney.

MR M. DAUBNEY, SC: May it please the Court.

5 We gather this morning to mark your Honour Justice Callinan’s final sitting in Brisbane as a Justice of the High Court of Australia, and to extend our congratulations and thanks to you for your years of service.

10 It seems only yesterday that your Honour, the sixth Queenslander to join this Bench, was sworn in. But in fact that happened almost nine and a half years ago, on 3 February 1998.

15 Two particular themes permeated the speeches delivered on that occasion, and it is appropriate to reprise them briefly today.

20 One theme, particularly addressed by representatives of the profession, including Mr Gotterson, QC, the then holder of offices you yourself had held, President of the Australian Bar Association and President of the Bar Association of Queensland, was the significance of your appointment to the High Court direct from the ranks of practising barristers. Your Honour on that occasion also highlighted the importance of the independent Bar and its place in the profession. That is a topic which has remained close to your heart throughout your tenure on this Court.

25 The advantages of having someone come straight from the coalface into the rarified atmosphere of this place have been clear on so many occasions during your time on the Court. You understood, from close and recent personal experience, the pressures under which practitioners are required to operate in the modern world and you brought the incalculable benefit of many years experience of advising and acting for clients across a broad spectrum of legal issues, both civil and criminal, and indeed the benefit of a true transnational practice. Now that we have the luxury of hindsight, we can affirm that the perspective your Honour brought to this Court has only served to enhance this as the Court for all Australians.

35 The other theme concerned the qualities your Honour brought to the Court. The following observations by the then Commonwealth Attorney-General at your swearing-in bear recounting. He said:

40 Like most appointments to the High Court, your Honour’s appointment has been the subject of considerable scrutiny. In fact, it has excited a modicum of controversy. You have been labelled by some in the media as a “conservative”. However, experience has shown that it is simplistic to typecast appointees to the Court as either “conservative” or “progressive”, “centralist” or “States Rightist”. I question whether those who have sought to typecast you

in that way were in fact aware of the extent of your achievements in the law and in other fields. They would certainly not be able to forecast how your Honour or, for that matter, any member of the Court, will decide any particular case in a few years time.

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Every judge brings to his or her office a range of individual life experiences which temper the way he or she views things. I have no doubt that your Honour will consider every matter that comes before you on its merits, based on the facts and arguments that are presented to you. You will deal with these matters in a fair and impartial manner.

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The Attorney-General's confidence in you was well placed, as our experience of you over the last nine and a half years has amply shown. The scholarship you have brought to your judgments is undoubted, but just as importantly, perhaps even more so, you have been eminently fair, sensible, proper and pragmatic in your application of the law to the real-life situations with which you have been confronted on a daily basis. One of your gifts has been to combine rigorous jurisprudence with common sense and humanity.

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Now we hear the clock ticking towards 31 August, your Honour's statutory use-by date. Perhaps your mind is turning already to life in retirement. Will the literary Callinan re-emerge - a memoir, a brace of plays or a clutch of novels, or will you be persuaded by those close to you to engage in horticultural pursuits, pottering with potting mix or tending the verdant green acres mounted high on your ride-on mower?

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We suspect your Honour will resist the latter on the undisputed basis that the pen remains mightier than the sword.

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May it please the Court.

GLEESON CJ: Mr Daubney. Mr Berry.

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MR I. BERRY: Your Honours. While today is a celebration of a distinguished career of his Honour Justice Ian Callinan as he attends his last High Court sitting in his home town, there is undeniably a tinge of sadness about it.

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Tuesday, 3 February 1988, the day we all welcomed your Honour to the highest Court in the land, only seems like yesterday, such is the pace of modern life. You were the 42nd appointee to this Court and the sixth Queenslander and it is a matter of great, even if somewhat parochial pride, that your very significant contribution to this Court has followed the

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tradition of other Queensland greats. You were preceded by Sir Samuel Griffith, Chief Justice Sir Harry Gibbs and Sir Gerard Brennan.

5 Your Honour's appointment was the first direct appointment to the Bench of our High Court from the private Bar since the appointment of Sir Keith Aicken back in 1976 and this was, in itself, no mean achievement.

10 Your Honour has had a stellar career in the law over some 45 years and I know that you will understand and appreciate that this branch of the profession is particularly proud of the fact that the first five years of that were as a solicitor. I am reminded that mighty oaks grow from little acorns.

15 Your Honour's service as a barrister began in 1965 and your appointment was extraordinary and was recognised by your appointment as a Queen's Counsel in 1978. You were widely recognised as one of the most formidable cross-examiners in this house and you ensured that through the work you did that your reputation was known nationally.

20 While comparatively rare and certainly not the traditional path to our High Court, your Honour's practice as a barrister took you to practically all jurisdictions in Australia, including the Privy Council, our High Court, the Federal Court, Supreme Courts and the Industrial Relations Commission. Your contribution to our profession while you were a barrister was formidable and included a long stint as President of the Queensland Bar Association from 1968 to 1987, President of the Australian Bar Association from 1984 to 1985 and Councillor of the Law Council of Australia from 1984 to 1986.

30 Your Honour is certainly a renaissance man, a patron of the arts. You were appointed Chairman of the Trustees of the Queensland Art Gallery, a published author, a noted collector of Australian art. Perhaps, in your impending retirement, you can indulge in those passions with a refreshed enthusiasm.

35 At your swearing-in in 1998, the then Attorney-General, the Honourable Darryl Williams, QC – and I might say he is not a man who talks much about High Court judges – and I quote him, “Your legal knowledge and intellectual abilities, your capacity to grasp issues quickly, your probity, as well as your many achievements during a long and
40 successful career at the Bar, equip you well for this important appointment.”

45 The then Attorney was certainly correct and while on that subject, he also said at that time, and again I quote, “The fact that your Honour hails from Queensland, while not a decisive factor in your appointment, does help maintain the national character and composition of a Court with national functions.”

Once again the then Attorney was absolutely correct and Queenslanders can only hope that the current Attorney-General remains mindful of them when considering the new appointment.

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I began by saying that there was a tinge of sadness about the ceremony today and that cannot be denied. However, we all have strong reason to be grateful that his Honour has served and, for a time, will continue to serve on our highest Court.

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Then, in the fullness of time, we will welcome him home and, knowing his reputation, I am sure that his Honour will continue to make distinguished and respected contributions in other areas.

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We, the solicitors of Queensland, your Honour, wish you well and hope that your health holds well in respect of the next stage in life's path. Thank you, your Honours.

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GLEESON CJ: Mr Berry. Justice Callinan.

CALLINAN J: Thank you, Mr Daubney and you, Mr Berry, for your kind, but extravagant remarks about my work at the Court and elsewhere.

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I would wish to acknowledge the Chief Justice of the Supreme Court, the judges of that court and other courts and my friends and colleagues at the Bar who pay me the considerable compliment of being present here today.

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May I also indulge myself by mentioning that my grandchildren, Winter, Declan, Aislinn, Feena and Sean, led by their parents, are making their first appearance in the High Court. I also notice with pleasure my protégé, William Beanland, in the back of the Court.

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As I rapidly approach the last milestone in my life as a lawyer, I look back upon the 47 years that have passed since I was first admitted to practice, with gratitude and not without some surprise, surprise in particular I suppose, because it all seems to have happened so quickly.

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Without asking you to join me in a tedious stroll down memory lane I will say just a little about those years.

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I became, as a young solicitor, a member of the firm of Conwell & Co. Mr Conwell, who retired not long after I joined the firm, but not before he had passed on to me some of the wisdom that he had acquired as a soldier and Military Cross winner in the First World War., and in 40 years in the law thereafter, was one partner, and Mr Busch, a Squadron leader and

navigator in the Second World War, the other. These gentlemen practised in a very gentlemanly way. They were an outstanding example to a young practitioner. I was 24 years old when Mr Conwell retired and I inherited his clients. I doubt whether any of them was less than triple my age. They did seem very old at the time, about my age now, as a matter of fact.

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The ensuing 32 years at the Bar were, for me, happy ones. Again, I was fortunate. My admission to the Bar happily coincided with a number of events. My master, Mr D.G. Sturgess, QC, decided that he would henceforth do only jury work, passing on to me, in consequence, much of his substantial civil practice, including the Toowoomba circuit. It was equally fortuitous that I would go into Chambers with Cedric Hampson, QC and Justice McPherson, as he was to become. These advantages, and the growth in commercial and entrepreneurial activity in Queensland, which began at about that time, made it difficult for an enthusiastic junior to fail. Afterwards, as a silk, I had the experience of appearing against many able counsel, including the Chief Justice on my right, people who have since graced the Federal, Supreme and District Courts in this State and elsewhere. Throughout, I was sustained by the support and encouragement of my wife. It is not always easy to be the spouse of a busy barrister. I have also been much assisted by my loyal personal assistant, Marilyn Robins, who has worked with me for more than 30 years.

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During those years I had never entertained any hope, let alone expectation, of appointment to this Court. I was both surprised and honoured when it happened.

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So you can see that I have had, like those generals whom Napoleon famously preferred to promote, a considerable amount of luck.

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Local, as well as national history, weighs heavily on an appointee to this Court, especially one from Queensland. Three of its Chief Justices, one of them an architect of the Federation, have been Queenslanders and so many of the other Justices have such a secure place in the Australian legal pantheon that the pressure to work to try to achieve, and to emulate them, is irresistible.

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When I was appointed I did, however, have a number of concerns. One was that the life of a judge, and therefore a public officer, would be more constricting and less creative than life at the Bar and as an ordinary citizen, but an awareness of what the most distinguished of my predecessors, Sir Owen Dixon said, when he was sworn in as Chief Justice of this Court tended to allay that. He said:

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“Lawyers are often criticised because their work is not constructive. It is not their business to contribute to the constructive activities of the community, but to keep the foundations and framework steady.”

5 To the limited extent that some creativity is allowed, I hope I have achieved it and, so far as the framework and foundations of the law are concerned, I hope that I leave them no less firm and sound than they were when I was appointed nearly 10 years ago.

10 I thank you again, all of you, for paying me the compliment of attending this, my last sitting day in Brisbane.

15 **AT 9.48 AM THE COURT ADJOURNED**