

Legal battle over NT's Chief Magistrate's appointment continues

Reporter: Murray McLoughlin

MAXINE McKEW: And now to an extraordinary development today in a legal battle in Darwin over the validity of the appointment of the Northern Territory's Chief Magistrate.

The legal challenge was launched last year, when the *7:30 Report* revealed the secret - and highly unusual - terms of the appointment.

The Territory Government tried - and failed - to have the challenge thrown out by Australia's High Court.

Now comes the revelation that the Territory's Chief Justice, Brian Martin, had known about - and secretly approved of - the terms of the Chief Magistrates' contract all along.

As a result he, and other Supreme Court justices, may be called as witnesses in the case.

So it's had to be moved from the Territory Supreme Court to the Federal Court.

Murray McLoughlin, who broke the original story about the Chief Magistrates's secret contract, reports on today's developments in Darwin.

MURRAY McLOUGHLAN: Little did the graduates of Northern Territory University two weeks ago know that the justice system in the Territory was descending into a mire.

Little did they know that their guest speaker, Bryan Martin, who presides over that mire, had been sitting for over a year on an extraordinary document, which now threatens his job as Chief Justice of the Northern Territory.

BRIAN MARTIN, NORTHERN TERRITORY CHIEF JUSTICE: With your astute powers of deductive reasoning and analysis, recently acquired, you'll realise that I have never attended a university.

MURRAY McLOUGHLAN: Bryan Martin was appointed Chief Justice of the NT in 1993 and Shane Stone welcomed him back then on behalf of the Government.

Shane Stone is now Federal President of the Liberal Party.

But in February 1998 he was Chief Minister of the NT.

That was when he appointed a new Chief Magistrate.

Hugh Bradley had run a large legal firm in Darwin.

It was assumed back then his appointment as Chief Magistrate would be permanent.

But last year the *7:30 Report* revealed he'd had a secret and special contract for only a two-year term.

That arrangement has been under legal challenge ever since.

GORDON HUGHES, LAW COUNCIL OF AUSTRALIA: The Law Council is very strongly of the

opinion that the appointment of anyone to the bench should be an appointment for life, or at least until a specified retiring age.

It's absolutely essential that people know they've got complete security of tenure in this job so that they can act in a way that they don't feel beholden to anyone who is appointed to them.

They aren't concerned about their prospects of reappointment.

They know that they can just go in and do their job without any outside interference from anyone.

MURRAY McLOUGHLAN: Chief Justice Bryan Martin apparently had no qualms about Hugh Bradley's appointment for just two years.

In the Supreme Court at Darwin today came the news that Chief Justice Martin not only thought Mr Bradley was a good man for the job, but that the two-year arrangement was of no concern and Chief Justice Martin gave that opinion in a letter to then chief minister Shane Stone in February '98 before that appointment was promulgated.

In other words -- the Chief Justice gave the thumbs up to the very argument that has been argued in his own Supreme Court for the past year.

RICHARD ACKLAND, LAWPRESS OF AUSTRALIA: I think it is very unusual for a chief justice to be giving extra mural advice to a chief minister or cabinet minister.

It is quite proper for an attorney general to seek advice about the suitability of a person for appointment to the bench.

But this advice seems to have gone beyond that because here, it is discussing the nature and terms of condition of appointment, and advising as to the constitutionality or otherwise, of that.

And this is very dangerous territory for chief justices to wander into because often, it can blow up in their faces.

MICHAEL MAURICE QC, FORMER NT SUPREME COURT JUSTICE: It's not the function of courts or chief justices or judges to give private legal opinions to government.

They only decide legal questions in the context of cases coming before them.

That's one thing.

It's a separation of powers issue, I suppose.

And the advice, itself, in my view is profoundly wrong.

MURRAY McLOUGHLAN: Michael Maurice is a NSW Queens Council and was a judge on the Northern Territory Supreme Court from 1984 to '88.

Mr Maurice knows well the ins and outs of the legal action against the Chief Magistrate in the Northern Territory Government.

He acted against them in the early stages of case.

But he's appalled to learn that Chief Justice Bryan Martyn had prior knowledge of crucial detail of the Bradley appointment and that the proof of that came out in court only today.

MICHAEL MAURICE: It raises serious questions, both about his judgment and, unfortunately, his integrity.

And I think these are questions which need to be answered very quickly, because it really does remove a basis for public confidence in the administration of justice in the Northern Territory.

MURRAY McLOUGHLAN: Bryan Martin's letter to Shane Stone is even more baffling, given the reaction of the Chief Justice when this program broke the story of the Chief Magistrate's employment deal over a year ago.

Then, all the Supreme Court judges met and wrote to the Chief Magistrate.

Chief Justice Bryan Martin signed the letter.

" -- it would be in the interests of the judiciary as a whole, and your interest in particular, that you make full public disclosure of those terms and conditions accompanied by any documents relating to them.

We urge you to take this step without delay to put an end to the disquiet and ongoing damage to the institution of the judiciary."

MICHAEL MAURICE: The Chief Justice, himself, has to provide an explanation as to how he came to be giving this opinion to Shane Stone and how he came to write that letter in March last year where he seems to know nothing about the circumstances of Bradley's appointment, the terms of his appointment, and the letter reads as though he's got very serious concerns about it, but the two documents just can't be reconciled.

I'd be very pleased to hear his explanation.

MURRAY McLOUGHLAN: Chief justice Martin was giving no explanations this afternoon.

His chambers said he had no comment on today's proceedings.

But he presides over a troubled court.

Parts of his letter to Shane Stone and other damaging correspondence were read into the record today by the barrister acting against the Government.

That correspondence had been released by a Supreme Court judge who was clearly disquieted by the actions of the chief justice, and now there's the spectre of the Chief Justice and maybe three other serving Supreme Court judges having to give evidence when the case comes on for trial in the Federal Court.

Observers like legal writer Richard Ackland say all that will continue to erode public confidence in the Territory's justice system.

RICHARD ACKLAND: For a long time, there's been a process where the -- the judges have been under enormous political pressure in the territory.

And this certainly won't help it.

I mean, the incremental politicisation of the judiciary is a problem, you know, actually around Australia, but it is particularly acute in the Northern Territory.

MURRAY McLOUGHLAN: Northern Territory chief Minister Dennis Burke has repeatedly scorned the conduct of the legal action, but he made sure he got a briefing from his legal team during the lunch recess today.

The Government has tried repeatedly to have the case killed off.

Today was yet another setback.

Mr Burke didn't want the case moved to the Federal Court.

It had something to do with territory sentimentality the Government's lawyer said today.

Worse, though, for Mr Burke is the prospect that the case may become an issue in a Territory election to be held before November.

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