SIR NINIAN STEPHEN LECTURE IN LAW

# TRUST CONTROL IN PRACTICE: INSPECTORS, REMOVAL OF TRUSTEES, AND THE LIMITS OF SUPERVISION

Delivered by M.D. Douglas
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In honour of Sir Ninian Martin Stephen KG AK GCMG GCVO KBE PC QC
15 June 1923 – 29 October 2017
Justice of the High Court of Australia · Governor-General of Australia
Jurist, Diplomat, and Public Servant

## I. THE OCCASION

It is a privilege to deliver a lecture bearing Sir Ninian Stephen's name — and a responsibility not to squander it on something he would have found tedious. I will try to avoid that fate.

Sir Ninian is an appropriate patron for a lecture about institutional accountability. His career — on the High Court, in the Governor-General's office, at the International Court of Justice, and on the bench of the International Criminal Tribunal for the former Yugoslavia — was defined by a single recurring concern: how power is exercised over those who cannot easily resist it, and what

legal and institutional arrangements exist to hold that exercise to account. He brought to each role the qualities that matter most in institutions: restraint, exactness, and a refusal to confuse the privileges of office with freedom from scrutiny.

On the High Court he occupied what his contemporaries described as the moderate centre — between the arch-conservatism of Barwick CJ and the radicalism of Murphy J — which, in my experience, is where the most interesting legal thinking tends to happen, since you are being shot at from both sides. As Governor-General he exercised reserve powers with constitutional scrupulousness and, on 26 October 1985, personally presented the title deeds to Uluru–Kata Tjuta National Park to Anangu elders in the ceremony that marked the handback of their traditional lands.

In Russell v Russell (1976) 134 CLR 495 the High Court addressed the open justice principle, and it is an observation from that case which could stand as the epigraph for this lecture: that a tribunal which conducts its hearings as a matter of course in closed court is not of the same character as one which habitually proceeds in open court. The connection to today's subject is direct. The trustee who refuses to keep records, who produces accounts only under compulsion, or who treats the beneficiaries' enquiries as an impertinence, is claiming a kind of closed jurisdiction that equity has never tolerated.

That connection — between transparency, accountability, and the proper exercise of power over others' interests — is the thread that runs through this lecture. It concerns the tools by which trust law ensures that trustees are accountable: the appointment of inspectors, the removal of defaulting or unfit trustees, and the principles that define the limits of the court's own supervisory role.

## II. THE THESIS: THE RETREAT FROM ADMINISTRATION

This lecture advances a thesis, and I want to state it plainly before turning to the law.

The history of trust supervision is the history of a court that began by being willing to stand in the place of a defaulting trustee — to step into the trust and run it — discovered through painful experience that this was a function it performed badly, and spent the following two centuries learning to supervise rather than administer. The inspector under Part 5A of the Trustee Act 1936 (SA) is the

most refined expression of that lesson. It is a mechanism designed to occupy as little of the court's time and as much of the trustee's accountability as possible: the inspector examines, reports, and steps aside. The administration stays where it belongs.

This trajectory — from administration to supervision — is not merely of historical interest. It explains why the specific mechanisms examined in this lecture are designed as they are, why they have the limits they do, and why a court that exceeds those limits tends to create more problems than it solves. Understanding the history is understanding the law.

## III. HISTORICAL BACKGROUND: FROM CHANCERY TO STATUTE

### *A. The Court of Chancery as creator and reluctant administrator*

The trust was equity's creation. In its mediaeval origins, as the 'use', it served a simple purpose: a landowner about to depart on Crusade could vest his estate in a trusted friend, secure in the knowledge — he hoped — that the property would be faithfully managed in his absence and returned to him, or his heirs, on his return. The common law courts were of no help when the trusted friend proved less trustworthy than advertised. The feoffee held legal title; that was that. It was the Court of Chancery, acting on the Lord Chancellor's conscience, that compelled the delinquent holder to make good.

That original jurisdiction was intimate and direct. The court did not merely stand behind the trust at a respectful distance; it was prepared, in cases of trustee default or incapacity, to step inside it. Through its Masters, the Chancery could receive accounts, direct investments, authorise sales, and effectively manage the trust estate. The trust existed not merely under the court's supervision but, in a practical sense, within it. Chancery was the trust's author, its guardian, and — when things went wrong — its reluctant acting trustee.

### *B. Lord Eldon's court: the high-water mark and its consequences*

The Chancellorship of Lord Eldon — from 1801 to 1827, interrupted only briefly — represents both the intellectual apex of this tradition and, looked at from a practical perspective, its reductio ad

absurdum. Eldon was a great systematiser. He aspired, famously, to ensure that equity did not vary like the Chancellor's foot — a phrase that implies a certain scepticism about the reliability of previous Chancellors' footwear. His declaration in Gee v Pritchard (1818) 2 Swans 402 that nothing would inflict upon him greater pain in quitting his office than the recollection that he had introduced variable justice captures both his ambition and, one suspects, his characteristic anxiety.

The problem was that Eldon's court was catastrophically slow. Cases waited years for hearing. Estates were locked in Chancery for decades. Jeremy Bentham — whose opinion of Lord Eldon was not warm — described the Chancery as a machine for generating costs. Bickersteth, giving evidence to the Chancery Commission, reported knowing of cases where an entire estate proved insufficient to pay the costs of the proceedings. Dickens put it more memorably in Bleak House: Jarndyce and Jarndyce was a caricature, but recognisable caricature. Its in-joke was that everyone who came into contact with the case was ruined by it — the suitors, the lawyers, and eventually the suit itself, consumed by the costs of its own resolution.

The reason for the dysfunction was institutional. The Chancery had inherited a model of trust supervision that was essentially administrative. The court enquired into trusts through its Masters, took accounts, gave directions at every turn, and treated the trustee almost as an officer of the court. This worked tolerably when trusts were simple testamentary settlements over a handful of parcels of land. It collapsed under the weight of the commercial and industrial world of the early nineteenth century, when trusts had become instruments for managing great estates, charitable foundations, and commercial enterprises — and the volume of trust business had grown to match.

The practical lesson is an institutional one. A court that tries to administer trusts will be overwhelmed by administration. Courts and trustees are different kinds of institutions. Courts act through procedure, argument, and written reasons. Trustees act through continuity, knowledge of the particulars, and responsiveness to changing circumstances. When a court tries to do a trustee's job, it does it slowly, expensively, and badly.

### *C. The Eldon formulation: a principle planted in problematic soil*

Against this background, one of Eldon's most important contributions to trust law takes on its full significance. In Morice v Bishop of Durham (1805) 10 Ves 522, he stated the foundational proposition of the court's jurisdiction over trusts:

*As it is a maxim, that the execution of a trust shall be under the control of the court, it must be of such a nature, that it can be under that control; so that the administration of it can be reviewed by the court; or, if the trustee dies, the court itself can execute the trust.*

The key claim — every trust under the control of the court — is an extraordinary one. But notice the word that does the work: control, not administration. The court controls; it does not itself manage. It stands ready to enforce the trust, not to execute it. Eldon planted, in the soil of his overcrowded and creaking court, a distinction that would take the next century and a half to fully cultivate.

The question that followed — fitfully, imperfectly, but with a consistent directional pull — was what control without administration ought to look like in practice. The answer that emerged was the graduated, proportionate, welfare-focused supervisory jurisdiction that we recognise today.

### D. The Victorian correction and the modern settlement

The Judicature Acts of 1873–1875 merged law and equity into a unified court system. By that point, a significant intellectual reorientation had already occurred. The Victorian era saw the emergence of the autonomous trustee model: the idea that the trustee is not an agent of the court but a fiduciary charged with independent judgment in the administration of the trust. The court's role became residual — enforcing duties and intervening when they were breached, but not second-guessing every exercise of discretion.

The principal doctrinal expression of this shift is familiar: the court will not interfere with the exercise of a trustee's discretion merely because it would have decided differently. The trustee has the discretion; it is the trustee's to exercise. This is not judicial deference for its own sake. It is the recognition, hard-won from experience, that the court cannot substitute its sporadic, procedural attention for the trustee's continuous, informed management.

The South Australian inspector regime, enacted in Part 5A of the Trustee Act 1936 (SA) and elaborated in decisions from Oxer through to the Adnyamathanha litigation, represents the most refined statutory expression of this settlement. The inspector investigates and reports. The administration stays with the trustee. The court acts on the report. Nobody runs the trust except the trustee. That is precisely the lesson that two centuries of experience recommended.

# IV. THE PROBLEM OF SUPERVISION

The trust divides control from enjoyment. The trustee holds legal title and exercises management powers. The beneficiaries hold the equitable interest and depend on the trustee to administer faithfully. That structure — familiar to every first-year law student — is the source of the trust's utility and of its characteristic danger.

The trustee has the documents, the accounts, the bank access, and the legal title. The beneficiary has rights but is often dependent on the trustee for the means of vindicating them. If the trustee fails to keep records, or keeps them and will not disclose them, the beneficiary's ability to detect — let alone remedy — a problem may be severely limited. In the most troubling cases, the beneficiary suspects something is wrong but cannot prove it, because the evidence is in the hands of the person they are trying to investigate.

Equity's answer to this structural problem has never been simply to hope for good behaviour. Trustees carry duties — of loyalty, honesty, proper accounting, and disclosure — and courts enforce those duties. But enforcement after the fact is not enough. The supervisory mechanisms examined here operate before breach is proved: they are designed to illuminate the administration of the trust before it has to be corrected in litigation.

# V. THE INSPECTOR JURISDICTION

## *A. The statutory framework in South Australia*

Part 5A of the Trustee Act 1936 (SA) deals with records and investigations. Section 84C empowers the Supreme Court to appoint an inspector to investigate the administration of a trust — either on a person's application or of the court's own motion. Section 84D arms the inspector with real teeth: the power to require production of records and documents, to inspect and copy them, and to question persons with relevant knowledge. The inspector reports to the Supreme Court and the Attorney-General.

Three features deserve emphasis. First, the jurisdiction targets the administration of the trust, not the character of the trustee. The inspector is not a character witness in reverse. The question is how the trust has been run, not what kind of person the trustee is. Second, the jurisdiction is investigative, not dispositive: the inspector reports; the court decides. Third, the mechanism addresses directly the information asymmetry at the heart of trust law — the beneficiary's inability to see inside an administration controlled by the very person they are concerned about.

That third feature also explains why the jurisdiction does not require proof of misconduct before it can be invoked. Requiring proof of misconduct as a condition of investigation would be a little like requiring a pathologist to diagnose the cause of death before conducting the post-mortem. The point of the inspector is to find out what happened, not to confirm what is already established.

### *B. The practical problem the jurisdiction solves*

Consider the beneficiary of a trust who suspects something has gone wrong. Perhaps distributions seem irregular. Perhaps some beneficiaries receive more than others without explanation. Perhaps questions to the trustee are met with delay, evasion, or — as happened in Adnyamathanha — a conditional offer to show certain documents to certain people on conditions that would shut down all further scrutiny. None of this may yet be conclusive of anything. But it is enough to generate genuine and well-founded concern.

That beneficiary has a classic evidentiary problem. To bring proceedings for breach of trust, they must plead and prove the breach. But the evidence is with the trustee. Committing to expensive litigation on the basis of suspicion alone carries real risks — of failure, of adverse costs orders, and of the trust's assets being depleted in the very proceedings designed to protect them. Which, as the Chancery experience showed, is not a merely theoretical risk.

The inspector mechanism resolves the dilemma. The beneficiary establishes a proper interest and a sufficient basis for concern. The court appoints an investigator with statutory powers to obtain the records the beneficiary could not. The investigation either clears the administration or reveals the basis for further relief. In either case, the court is better placed than it was — and the administration has been disturbed to the minimum extent consistent with finding out what is going on.

### *C. The South Australian authorities: Oxer to Adnyamathanha*

The South Australian cases have built a coherent and practically important body of principle around this jurisdiction.

Oxer v Astec Paints Australia Pty Ltd (2005) 240 LSJS 109; [2005] SASC 192 confirmed the breadth of the section 84C power, identified its purpose as securing the due administration of trusts, and made clear that the court is not confined to acting only after a breach has been proved. Hunter v Colton [2009] SASC 129 reinforced the centrality of the trustee's record-keeping duty: a trustee who will not maintain or produce accounts is not administering a trust in any meaningful sense. They are exercising unsupervised power over property belonging in equity to others.

The most substantial recent examination of the jurisdiction arrives in the Adnyamathanha litigation, which is worth examining in some detail, because it shows the mechanism doing serious work in a setting where the stakes were entirely real.

The Adnyamathanha Master Trust was established to receive and distribute royalty payments from native title mining agreements, including uranium royalties from the Heathgate mine in South Australia. The beneficiaries were approximately 850 members of the Adnyamathanha people, whose traditional lands span the Flinders Ranges. The trustee was Rangelea Holdings Pty Ltd — a company controlled by the former chief executive of ATLA, the registered native title body corporate for those lands. By 2020, the Office of the Registrar of Indigenous Corporations had intervened to remove ATLA's directors and appoint special administrators, citing what it described as chronic and severe governance failures.

The applicants' concerns were specific: irregular distribution lists, unexplained discrepancies in payments between sub-groups, and a general inability to determine what money the trust was receiving or what was being done with it. When proceedings were commenced seeking access to the records and the appointment of an inspector, Rangelea offered a deal: it would show certain recent financial statements to three named individuals, subject to strict confidentiality conditions, if they agreed to discontinue all court proceedings. The offer was declined. One can see why. An offer of partial information, on conditions designed to prevent it being shared with the very community it concerned, and contingent on abandoning the right to enquire further, is not transparency. It is a controlled simulation of it.

On 5 April 2023, Kourakis CJ gave judgment in Adnyamathanha Traditional Lands Association v Rangelea Holdings Pty Ltd [2023] SASC 51. The trust was a private discretionary trust, not a charitable one — which mattered because it determined the standing of the individual applicants as beneficiaries with enforceable rights. The inspector would be appointed. The financial records were to be produced immediately. Two principles from the reasons are significant: first, that the jurisdiction targets the administration of the trust, not the personal conduct of the trustee; second, that being denied information the beneficiaries are entitled to have is itself sufficient basis for an inspection order — the opacity of the administration is evidence that investigation is warranted.

Rangelea appealed. The Court of Appeal unanimously dismissed that appeal on 28 March 2025: Rangelea Holdings Pty Ltd v Adnyamathanha Traditional Lands Association [2025] SASCA 32. Section 84C requires no proof of misconduct. The breadth of the discretion was confirmed. Rangelea's persistent failure to provide records or explain its administration was itself sufficient to justify the inspector's appointment. Rangelea then sought special leave to appeal to the High Court. Special leave was refused with costs on 7 August 2025: [2025] HCADisp 140. The litigation, so far as the right to appoint an inspector and compel production of the records is concerned, is now at an end.

These decisions trace a complete arc: application, appointment, compelled production of records, appeal, and final refusal of leave. That arc is precisely what the thesis predicts — the court finding out, then deciding what the finding requires, without at any point taking over the administration of the trust itself. The inspector mechanism does not end with appointment. Once investigation has occurred, the inspector's report and its consequences — questions of publication, dissemination, and the procedural fairness obligations that attach to its use — will in complex cases call for further judicial attention. But the fundamental entitlement of beneficiaries to an independent investigation of the trust's administration has now been confirmed at every level of the Australian court system at which it was contested.

### *D. The position outside South Australia*

The South Australian provisions are unusual in their specificity. The Trustee Act 1925 (NSW) contains extensive provisions about the appointment and replacement of trustees but no equivalent private trust inspector regime. The Charitable Trusts Act 1993 (NSW) allows the appointment of a receiver for charitable trusts in cases of misconduct — but a receiver takes over management; an

inspector investigates it. They are different responses to different problems, and the latter is not a substitute for the former.

In other Australian jurisdictions, there is no equivalent of the Part 5A inspector regime. While other jurisdictions have statutory powers enabling trustees to appoint auditors, and courts retain their inherent supervisory jurisdiction over trusts, neither mechanism provides beneficiaries with a direct investigative remedy of the kind that Part 5A creates. Beneficiaries in those jurisdictions who cannot yet plead maladministration with the particularity the rules require are largely confined to the court's inherent jurisdiction and procedural mechanisms such as discovery and subpoena, which presuppose existing adversarial proceedings. The Part 5A inspector regime remains, in this targeted and accessible sense, distinctive.

The result is that the availability of a proportionate investigative remedy depends on the accident of the governing jurisdiction. South Australia has the clearest statutory inspector regime in Australia. A beneficiary of a native title trust, a testamentary trust, or a family trust administered elsewhere does not have equivalent tools. The historical trajectory of the supervisory jurisdiction — from Chancery administration towards targeted, minimal, statutory investigation — points towards a national framework that would complete the journey. That work remains unfinished.

## VI. REMOVAL OF TRUSTEES

### *A. Sources of the jurisdiction*

A trustee may be removed under an express power in the trust instrument, under statute, or under the inherent jurisdiction of the Supreme Court. In practice, all three may be available simultaneously, which is one of those features of trust law that gives practitioners a choice of weapons.

The express power — typically vested in an appointor — is the most direct. Where it exists and is validly exercised, no court is needed. But not all trusts are well drafted, and not all appointors are independent. In family trust disputes especially, the appointor is often aligned with one faction, and the exercise of the removal power is itself contested. The mechanism designed to avoid litigation becomes the subject of litigation. This, too, is a recognisable pattern.

Statutory powers exist in every Australian jurisdiction — section 14 of the Trustee Act 1936 (SA), section 70 of the Trustee Act 1925 (NSW), section 77 of the Trustees Act 1962 (WA), and their equivalents elsewhere — conferring on the Supreme Court the power to appoint a new trustee where it is expedient to do so but impracticable or inexpedient to proceed without judicial assistance. The statutory power supplements, rather than displaces, the equitable jurisdiction.

The inherent jurisdiction is the foundation. It descends directly from the claim in Morice v Bishop of Durham: every trust is under the control of the court. It is the court's power to enforce the trust by ensuring that the office of trustee is held by someone fit and willing to discharge it faithfully.

### *B. The governing principle: Letterstedt v Broers*

The leading authority is Letterstedt v Broers (1884) 9 App Cas 371, decided by the Privy Council, and still the controlling statement of principle for trustee removal throughout the common law world after more than a century.

The facts are worth knowing. Miss Letterstedt — who had by then become the Vicomtesse de Montmort — was the beneficiary of her father Jacob Letterstedt's estate, administered by the Board of Executors of Cape Town, a corporate trustee constituted under colonial ordinance. Her father had carried on a brewing and distillery business, and the trust arrangements were elaborate. She alleged overcharging of commissions, misapplication of trust funds, and sustained resistance to her reasonable enquiries. She also alleged fraud. The fraud was not proved. But the Privy Council removed the Board anyway, because the accumulated hostility between the parties — grounded in the trustee's obstructive conduct and its substantial over-charges — had made it impossible for the trust to be properly executed with the Board remaining. Proving fraud, it turned out, was beside the point.

Lord Blackburn's statement of principle has become canonical:

> *In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any more definite rule in a matter so essentially dependent on details often of great nicety. But they have looked carefully at the whole of the circumstances of the case, and acting on the principle of always keeping in view the welfare of the beneficiaries as the first and dominant consideration... they have come to the conclusion that it is impossible that the trust should be properly executed by the present trustee.*

Several things are worth noting. First, the jurisdiction is welfare-directed: the first and dominant consideration is the welfare of the beneficiaries, not the culpability of the trustee. Second, it is prospective: not 'what did the trustee do?' but 'can the trust be properly executed if this trustee remains?' Third — and the Privy Council makes this with some feeling — a trustee who refuses to resign when asked by the beneficiaries, without reasonable grounds, invites the litigation that follows and should not expect the court's sympathy. Miss Letterstedt had already demonstrated, in earlier proceedings, the capacity to reach settlement when the parties were willing. The Board had not taken that lesson to heart. It paid accordingly.

### *C. The Australian statement: Miller v Cameron*

In Australia, the foundational treatment of the removal jurisdiction is Dixon J's exposition in Miller v Cameron (1936) 54 CLR 572. The facts were unglamorous: the trustee had made an assignment for the benefit of his creditors, paying five shillings in the pound. He was bankrupt in the practical if not the technical sense. Every beneficiary and the settlor himself asked him to go. He declined. The question was whether this justified removal.

Dixon J stated the governing principles with the lapidary precision that is his signature: the jurisdiction is exercised with a view to the interests of the beneficiaries, to the security of the trust property, and to an efficient and satisfactory execution of the trust and a faithful and sound exercise of the powers conferred upon the trustee. The judgment is largely discretionary, based on considerations possibly large in number and varied in character.

Three points link this decision to the historical thesis. No complaint had been made about Miller's administration of the trust property itself. No breach was alleged. The ground of removal was simpler and more prospective: his personal financial failure had impaired confidence in the future administration of the trust. Dixon J was not asking whether Miller had done something wrong. He was asking whether, in all the circumstances, there was sufficient confidence in Miller's continued stewardship to justify leaving him in office over the objections of every person whose interests the trust existed to serve. There was not.

### *D. The principles applied*

The recent Australian cases consistently reflect these principles.

Cardaci v Cardaci [2023] WASCA 158 confirmed that the removal jurisdiction is not confined to cases of bad faith or proved misconduct. Buss P, Murphy and Mitchell JJA rejected the argument that the statutory test of expediency, or the equitable criterion of beneficiary welfare, impose any such threshold. The jurisdiction is flexible, prospective, and welfare-focused. A trustee need not have misbehaved to be removed — they need only have become unfit for continued administration of this trust for these beneficiaries.

Smith v Kennedy [2025] QSC 27 offers a less dramatic but instructive illustration. The trustee had managed the trust's assets competently in a narrow financial sense. The problem was that the trust existed to serve the welfare of minor children, and the trustee had attended to asset preservation while giving insufficient weight to the children's actual needs as children rather than as equitable title-holders. The trust had a purpose; the administration had lost sight of it. That, too, is a ground for removal.

The Victorian Court of Appeal's decision in Wareham v Marsella [2020] VSCA 92 provides a further illustration of how welfare-focused the removal jurisdiction has become. In that case, the trustees of a superannuation fund had exercised a discretionary power to pay a death benefit without giving real and genuine consideration to the competing claims of all eligible objects. The Court of Appeal upheld their removal. No dishonesty was required. The ground was that the trustees had failed to give the matter the genuine consideration that the proper exercise of a discretionary power requires. Removal without moral fault, justified by the failure of the administration to meet the standard the trust demanded.

### *E. Inspection and removal: sequential, not rival*

These two jurisdictions are not alternatives to be chosen between. They are sequential stages of the same response to trust dysfunction.

Where the problem is evidentiary — the beneficiary cannot prove the breach because the evidence is with the trustee — inspection comes first. The inspector investigates and reports. If the report clears the trustee, the matter ends. If it reveals grounds for removal, it provides the evidentiary foundation for the next step. Removal then follows, not on suspicion, but on evidence.

The Adnyamathanha litigation demonstrates this arc from beginning to end: proceedings, inspector appointment, compelled production of records, appeal dismissed by the Full Court, special

leave refused by the High Court. Each stage proportionate to the last. The court never taking over. The thesis visible in the structure.

## VII. THE LIMITS OF SUPERVISION

The powers examined so far come with limits, and the limits are as important as the powers. They define what the jurisdiction is and, equally importantly, what it is not allowed to become.

### *A. The court supervises; it does not administer*

The most fundamental limit: the court's role is supervisory, not administrative. The claim in Morice v Bishop of Durham — that every trust is under the control of the court — does not mean that the court runs trusts. It means the court stands ready to enforce them. The distinction is the whole lesson of the Chancery's history. The court retains a residual power of general administration, but the case law is clear that this power should be exercised only lightly and in exceptional circumstances. A court that routinely crosses from supervision into administration will recreate the dysfunction it is trying to cure.

In practical terms: appointing an inspector does not transfer administration of the trust to the court. Removing a trustee and appointing a replacement installs a new trustee; the court is not the replacement trustee. Directions can be given; day-to-day management cannot be assumed. The court provides the framework; the trustee provides the administration. This is not timidity. It is the accumulated institutional wisdom of two centuries.

### *B. The court enforces the trust as it stands; it does not rewrite it*

The supervisory jurisdiction does not include a power to alter the trust's terms. An inspector investigates the trust as constituted; removal changes the trustee, not the trust. A beneficiary dissatisfied with the terms of the settlement — who wants the discretion narrowed, the beneficial class extended, or the purposes changed — cannot use the supervisory jurisdiction to achieve those objectives. Variation requires different processes: Saunders v Vautier, statutory variation mechanisms, or the specific jurisdiction to approve variations on behalf of those unable to consent.

The formulation in Morice v Bishop of Durham makes this clear. The execution of the trust shall be under the court's control. The execution — not the reconstitution, not the variation. The court's jurisdiction is bounded by the trust as the settlor made it.

### *C. The jurisdiction can be misused, and the court knows it*

Trust supervision mechanisms can be weaponised. An application for the appointment of an inspector imposes costs and reputational risk on the trustee before any finding is made. In contested family trust disputes and commercial trust structures, such applications may be brought not from genuine concern about administration but to impose costs, obtain effective discovery in advance of broader litigation, or simply to inflict inconvenience. The requirement of a proper interest, and the court's discretion to decline applications not genuinely directed at the trust's administration, are safeguards against these uses.

Removal applications are susceptible to the same misuse. Not every allegation of maladministration in a trust dispute is what it purports to be. Some are family warfare. Some are commercial disputes about control dressed in the language of breach of trust. The welfare-focused, prospective criterion — does this trustee's continued tenure impair the future execution of this trust for these beneficiaries? — provides some protection. The question forces the applicant to demonstrate a real and forward-looking harm, not merely a grievance.

### *D. The framework remains incomplete*

South Australia has a developed statutory inspector regime, given real content by the courts. Other Australian jurisdictions have adjacent but not equivalent mechanisms. That patchwork is a deficiency in the current framework, and it is one that matters practically.

The historical trajectory — from Chancery administration to targeted statutory investigation — points clearly towards a national uniform framework that would extend the South Australian model. A beneficiary of a native title trust, a testamentary trust, or a family trust administered in New South Wales or Queensland should not have fewer tools for securing transparency than their counterpart in South Australia. The lesson has been learned; it has not yet been applied uniformly. That is the unfinished business of the supervisory jurisdiction.

# VIII. CONCLUSION

The law of trusts is often described in terms of duty, conscience, and fidelity. Those ideas remain central. But the practical problem of trust law is supervision — and the practical difficulty of supervision has always been to find a form of oversight that is effective without itself becoming the dysfunction it is trying to cure.

The Court of Chancery, at its most interventionist, cured trust dysfunction by absorbing the administration of the trust. The cure was often worse than the disease. Cases took decades. Estates were consumed in costs. Jarndyce and Jarndyce was not a warning; it was a description. The lesson drawn — over many decades, imperfectly and fitfully, but with a consistent direction — was that the court's role is to supervise without administering: to enforce, investigate, and when necessary replace, but never itself to manage.

Sir William Grant MR planted the essential principle in Morice v Bishop of Durham, affirmed by Lord Eldon on appeal: every trust is under the control of the court. The following century and a half worked out what control without administration ought to look like. The South Australian inspector regime, elaborated in decisions from Oxer and Hunter through to the Adnyamathanha litigation — upheld at first instance, on appeal, and finally confirmed when the High Court refused special leave on 7 August 2025 — is the current answer. The court appoints; the inspector investigates; the report enables an informed response. At no point does the court assume management of the trust. The administration stays with the trustee unless and until investigation justifies removing them.

The removal jurisdiction stands alongside it. Letterstedt v Broers and Miller v Cameron identify the point of the jurisdiction with precision: not 'what did the trustee do?' but 'can sufficient confidence be maintained in this trustee's future administration?' That is a prospective, welfare-focused, proportionate criterion — the product of the same historical refinement.

The limits matter as much as the powers: the court supervises without administering; it enforces the trust as the settlor made it rather than reconstituting it to the beneficiaries' preference; and it is alert to the tactical misuse of its own mechanisms. Those limits explain why the current law works better than the system it replaced. They are not weaknesses. They are the architecture.

The unfinished work is national uniformity. The historical trajectory points clearly towards a framework in which a beneficiary of a trust in any Australian jurisdiction can seek a proportionate investigative remedy when transparency has failed. We are not there yet. But the direction of the line is clear.

Sir Ninian Stephen, across the many settings in which he served, confronted the same fundamental question: how is power over others held accountable? The inspector, the removal order, and the graduated supervisory system they represent are trust law's current answer to that question. They have been earned by experience. They should be used with the discernment that Sir Ninian exemplified, and extended with the uniformity the historical trajectory recommends.

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# NOTES AND AUTHORITIES

### Statutes

[1] Trustee Act 1936 (SA), Part 5A (ss 84C–84D): records and investigations.

[2] Trustee Act 1936 (SA), s 14: appointment of new trustee.

[3] Trustee Act 1925 (NSW), Div 1: appointment, retirement, and related matters.

[4] Charitable Trusts Act 1993 (NSW), s 7: receiver for charitable property.

[5] Trustees Act 1962 (WA), s 77: appointment of new trustee.

[6] Trusts Act 1973 (Qld), s 12: appointment and removal of trustees.

### Cases — Historical

[7] Morice v Bishop of Durham (1804) 9 Ves 399 (Grant MR); affirmed (1805) 10 Ves 522; 32 ER 947 (Eldon LC). Every trust under the control of the court; the maxim of control, not administration.

[8] Gee v Pritchard (1818) 2 Swans 402; 36 ER 670 (Eldon LC). Equity must not vary like the Chancellor's foot; doctrines to be settled and uniform.

[9] Letterstedt v Broers (1884) 9 App Cas 371 (PC, Lord Blackburn). Welfare of beneficiaries as first and dominant consideration; removal despite absence of proved fraud.

[10] Miller v Cameron (1936) 54 CLR 572; [1936] HCA 13 (Dixon J). Canonical statement of the removal jurisdiction; prospective criterion; impairment of confidence in future administration.

## Cases — Modern Australian

[11] Oxer v Astec Paints Australia Pty Ltd (2005) 240 LSJS 109; [2005] SASC 192. Inspector appointment under s 84C; breadth of discretion; due administration as governing criterion.

[12] Hunter v Colton [2009] SASC 129. Trustee's record-keeping obligation; supervisory role of court. Cited as authority in Rangelea Holdings Pty Ltd v Adnyamathanha Traditional Lands Association [2025] SASCA 32.

[13] Adnyamathanha Traditional Lands Association v Rangelea Holdings Pty Ltd [2023] SASC 51 (Kourakis CJ). Adnyamathanha Master Trust; private discretionary trust; appointment of inspector; production of financial records; opacity itself as ground for investigation.

[14] Rangelea Holdings Pty Ltd v Adnyamathanha Traditional Lands Association [2025] SASCA 32. Appeal dismissed; s 84C requires no proof of misconduct; broad discretion confirmed; persistent failure to provide records sufficient.

[15] Rangelea Holdings Pty Ltd as Trustee of the Adnyamathanha Master Trust v Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC (ICN3743) (Under Special Administration) & Ors (A10/2025): special leave refused with costs, 7 August 2025, [2025] HCADisp 139. Litigation concluded at all levels of the Australian court system.

[16] Cardaci v Cardaci [2023] WASCA 158 (Buss P, Murphy and Mitchell JJA). Removal jurisdiction not confined to bad faith or misconduct; flexible welfare criterion; special leave refused [2024] HCASL 136.

[17] Smith v Kennedy [2025] QSC 27 (Cooper J). Trust for minor children; inadequate regard for beneficiaries' welfare beyond narrow asset management; trustee removed and replaced.

[18] Wareham v Marsella [2020] VSCA 92 (Tate, McLeish and Hargrave JJA). Trustees of superannuation fund removed for failure to give real and genuine consideration to discretionary power; removal without dishonesty; welfare criterion applied prospectively.

[19] Russell v Russell (1976) 134 CLR 495; [1976] HCA 23. Open justice principle; Gibbs J at 520, Stephen J at 532 on institutional character of courts proceeding in open session.

## Cases — Comparative

[20] Bristol and West Building Society v Mothew [1998] 1 Ch 1 (CA, Eng). Millett LJ on single-minded loyalty and the fiduciary position.

[21] Schmidt v Rosewood Trust Ltd [2003] UKPC 26; [2003] 2 AC 709 (Lord Walker). Inherent jurisdiction to supervise trusts; disclosure to beneficiaries not dependent on proprietary interest.

## Secondary Materials

[22] Halsbury's Laws of Australia, 'Liability for Breach of Trust': inspector as alternative to litigation.

[23] Victorian Law Reform Commission, Trading Trusts — Oppression Remedies (Report No 3, 2023), ch 4.

[24] Nolan, RC, 'The Execution of Trusts Shall Be under the Control of the Court' (2016) 2(2) CJCCL 469.

[25] Riley, C, 'Jeremy Bentham and Equity: The Court of Chancery, Lord Eldon, and the Dispatch Court Plan' (2018) 39(1) Journal of Legal History 29.

[26] Ashurst, 'Transparency for Adnyamathanha People over Distribution of Native Title Monies' (August 2023).

[27] Jackson McDonald, 'Transparency in Native Title Trusts: South Australian Court of Appeal Decision' (April 2025).

[28] National Museum of Australia, 'Handback of Uluru to the Anangu' (Defining Moments resource): Governor-General Sir Ninian Stephen presented title deeds to Uluru–Kata Tjuta National Park to Anangu elders, 26 October 1985.