

1991-1992

THE  
NORTHERN  
TERRITORY  
LAW REPORTS

THE AUTHORISED REPORTS OF DECISIONS OF  
THE SUPREME COURT OF THE NORTHERN  
TERRITORY

EDITOR  
TOM PAULING QC

VOLUMES 1-2

THE LAW BOOK COMPANY LIMITED

1994

THE COUNCIL OF LAW REPORTING FOR THE  
NORTHERN TERRITORY

CHAIRMAN

THE HONOURABLE JUSTICE DEAN MILDREN

EDITOR-IN-CHIEF

TOM PAULING QC

DEPUTY EDITOR-IN-CHIEF

GRAHAM HILEY QC  
(until 4/2/94)

TREVOR RILEY QC  
(from 4/2/94)

EDITORS

PROFESSOR NED AUGHTERSON

DAVID FARQUHAR

CAMERON FORD  
(until 9/7/92)

SALLY GEARIN

W J KARCZEWSKI

SECRETARY, TREASURER AND PUBLIC OFFICER

ROBYN SMITH

REPORTERS

JENNY BLOKLAND  
DAVID FARQUHAR  
HELEN FINDLAY  
CAMERON FORD  
SALLY GEARIN  
KEN GRIME  
NEVILLE HENWOOD  
GRAHAM HILEY QC  
W J KARCZEWSKI  
C R McDONALD  
GREG MacDONALD  
TREVOR RILEY QC  
STEVE SOUTHWOOD  
SUE TROLLOPE  
R J WALLACE  
RAELENE WEBB  
ALISTAIR WYVILL

Published in Sydney by  
The Law Book Company Limited  
44-50 Waterloo Road, North Ryde, NSW  
568 Lonsdale Street, Melbourne, Victoria  
40 Queen Street, Brisbane, Queensland  
81 St George's Terrace, Perth, WA

ISSN 1038-9237

© The Law Book Company Limited 1994

Printed by the Law Book Company Ltd, North Ryde, NSW  
Bound by Ligare Pty Ltd, Riverwood, NSW

SUPREME COURT OF THE NORTHERN  
TERRITORY OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

CHIEF JUSTICE

THE HONOURABLE JUSTICE KEITH JOHN AUSTIN ASCHE

JUDGES

THE HONOURABLE JUSTICE JOHN ANTHONY NADER  
(retired 28 March 1992)

THE HONOURABLE SIR WILLIAM JOHN FRANCIS KEARNEY CBE

THE HONOURABLE JUSTICE PHILLIP JOHN RICE  
(retired 31 January 1991; died 4 June 1991)

THE HONOURABLE JUSTICE BRIAN FRANK MARTIN AO MBE

THE HONOURABLE JUSTICE DAVID NORMAN ANGEL

THE HONOURABLE JUSTICE DEAN MILDREN  
(appointed 28 June 1991)

THE HONOURABLE JUSTICE SALLY GORDON THOMAS  
(appointed 10 August 1992)

JUDGE RESIDENT OUTSIDE THE  
NORTHERN TERRITORY

THE HONOURABLE JUSTICE JOHN FOSTER GALLOP

ADDITIONAL JUDGES

THE HONOURABLE JUSTICE TREVOR REES MORLING  
(appointed 21 December 1991)

THE HONOURABLE JUSTICE LANCELOT JOHN PRIESTLEY  
(appointed 4 August 1992)

ACTING JUDGE

THE HONOURABLE JUSTICE IAN GRAY  
(from 30 January to 31 July 1991)

---

ATTORNEY GENERAL

THE HONOURABLE DARYL MANZIE MLA

SUPREME COURT OF THE  
NORTHERN TERRITORY OF AUSTRALIA

MEMORIAL SITTING  
ON THE OCCASION  
OF  
THE DEATH OF  
THE HONOURABLE PHILLIP JOHN RICE QC

On 11 June 1991, at a sitting of the Full Court tributes were paid to the Honourable Phillip John Rice QC formerly a Judge of the Court who died on 4 June 1991 having retired prematurely due to ill health to which he eventually succumbed.

The Addresses were made by the Attorney-General, the Hon Daryl Manzie MLA, the Solicitor-General Mr Tom Pauling QC, Mr Dean Mildren QC on behalf of the Law Society and the Bar Association of the NT and Mr Len Flanagan QC (DPP). His Honour the Chief Justice responded. Some edited parts of the Attorney's address and the response by the Chief Justice are set out below.

Mr Manzie: May it please the court, I appear on behalf of the Government of the Northern Territory at these special sittings to pay my respects on the recent sad passing of the late Phillip Rice QC.

It was only a few months ago that I rose in the Legislative Assembly to bid farewell to the late judge and his family on the occasion of his premature retirement from the bench. It was an unhappy occasion for all of us because the Territory had lost a distinguished member of the judiciary, as well as a valued member of the community.

Our thoughts also went with the late judge and his family as they carried the personal burden dealt them by the increasing deterioration in the judge's health. The news last week of Phillip Rice's passing, while not entirely unexpected, nonetheless left us with a deep sadness and a loss.

The late Phillip Rice was noted for his warm and personable nature. It is therefore no surprise to us that he became a much loved and popular figure in chambers and amongst those who had the pleasure of his friendship. He was also an esteemed jurist who brought to the Territory and this Honourable Court, in March 1985, a wealth of experience in the law.

Of course Phillip Rice was no stranger to the Territory, having spent some years as a primary school boy in Alice Springs during the 1930s. His appointment to the Northern Territory Supreme Court in 1985 was a far cry indeed from those days in the early 1950s when, to use his own words "A callow youth put up his shingle at Alice Springs".

It was in Alice Springs that the young Phillip Rice established his standing and popularity as a legal practitioner who received his tuition from Kriewaldt J before whom he appeared on many occasions on cases ranging from mining disputes to murder trials.

We are already familiar with the development of the late judge's career after those early days in Alice Springs, of how he went on to join the Adelaide firm of Alderman, Brazel, Clark and Ligertwood, of his later decision to practice solely as a barrister specialising in criminal law following his appointment as a Queen's Counsel in 1970 and, of course, of his

appointment in December 1983 as a judge of the District Court of South Australia.

The late judge's career was also shaped by a wide variety of appointments to various bodies in the South Australian legal fraternity, as well as his continuing involvement in the legal affairs of the Royal Australian Navy, including his appointment as Commodore to advise the Chief of Naval Staff on the propriety of courts martial.

Over more recent times Phillip Rice assumed the position of regional chairman of the Winston Churchill Memorial Trust in the Northern Territory. As most of you would know, the trust was established for the very worthwhile purpose of funding overseas study for selected fellowship awardees. As chairman of the committee which judged and awarded these fellowships, Phillip Rice also sat as a member of the national executive of the trust. He will be remembered for his valuable contribution and as a pleasant and enthusiastic chairman of the trust.

I have said on another occasion that Phillip Rice's career can be described as an impressive illustration of his commitment to an abiding interest in the law. That statement, I believe, is a fitting tribute to the late judge. His contribution to the Territory will not be forgotten. We have been doubly fortunate in having had the benefit of his legal experience and the pleasure of his company.

On behalf of the Government of the Northern Territory, the Department of Law and my own family, I extend my condolences to Prudence and the children in their period of bereavement.

Asche CJ: Thank you Mr Director, Mr Attorney, Mr Solicitor, Mr Mildren, Mr Director and those present today, and may I say we are honoured to have with us his Honour the Administrator and Mrs Muirhead and the Right Honourable the Chief Minister of the Territory, to pay their respects to one who has given the Territory much great service and left behind him, as the speeches have obviously indicated, memories which will be good memories.

He was a cheerful person. And as was said by himself of Falstaff, whom he to some extent resembled figuratively, and if I could paraphrase, he was not only cheerful himself but the cause of cheerfulness in others. He spread around an air of enjoyment, and that was one of the pleasures to be in his company. He was a great raconteur and I will myself miss the times when we have sat together after court listening to Phil telling us one of his inimitable stories.

But there is so much that we could say of Phil, and I am very pleased to note that, while we are immensely sad at his loss as has been indicated by what people have said at the bar table, we will always remember something more than that and we will always remember him with great cheerfulness.

That cheerfulness was also courageous. In his last few months, when he was very ill indeed, not only when I saw him in hospital but when myself and my brother judges telephoned him from time to time, when he was in Adelaide, I don't think we ever found a note of depression in his voice and he was always pleased to hear us. And, although he must have been from time to time suffering great pain and discomfort, he never revealed that to us. It was sadly clear to some of us that the end was coming and, for many of us and I am sure for his Honour himself, it would have come as a relief.

I would like to say something also about his wife Prudence, who has most

loyally helped, stood by him and done everything she could for him in these last sad, difficult months. To her we extend our sympathy and our love. We on the bench, every one of us, have lost a great friend; one whose loss we will ever regret but whose memory we will ever cherish and whose kindness we will always try to emulate.