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MELANIE J LITTLE

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SUPREME COURT OF THE NORTHERN
TERRITORY OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

CHIEF JUSTICE

THE HONOURABLE JUSTICE BRIAN FRANK MARTIN AO MBE

JUDGES

THE HONOURABLE JUSTICE DAVID NORMAN ANGEL

THE HONOURABLE JUSTICE DEAN MILDREN RFD

THE HONOURABLE JUSTICE SALLY GORDON THOMAS AM

THE HONOURABLE JUSTICE STEVEN RONALD BAILEY

THE HONOURABLE JUSTICE TREVOR JOHN RILEY

JUDGE RESIDENT OUTSIDE THE
NORTHERN TERRITORY

THE HONOURABLE JUSTICE JOHN FOSTER GALLOP AM RFD
(retired 31 July 2000)

THE HONOURABLE JUSTICE LANCELOT JOHN PRIESTLEY

THE HONOURABLE JUSTICE HOWARD OLNEY

ACTING JUDGE

THE HONOURABLE JUSTICE FOSTER GALLOP AM RFD
(From 1 August 2000)

THE HONOURABLE JUSTICE ROBERT BROOKING

THE HONOURABLE JUSTICE JOHN JEREMY DOYLE

ATTORNEY-GENERAL

THE HONOURABLE D G BURKE MLA
(appointed 9 February 1999)

CORRIGENDUM

Lexcray Pty Ltd v Northern Territory of Australia reported in 10 NTLR 156 will now be referred to as *Lexcray Pty Ltd v Northern Territory of Australia (No 2)* 10 NTLR 156.

This is to distinguish it from *Lexcray Pty Ltd v Northern Territory of Australia* 9 NTLR 213.

Some minor typographical errors have been corrected, and so where the unbound parts differ, the Bound version is to take preference.

SUPREME COURT OF THE
NORTHERN TERRITORY OF AUSTRALIA

CEREMONIAL SITTING
TO FAREWELL

THE HONOURABLE JUSTICE JOHN FOSTER GALLOP AM RFD

On 23 June 2000, at a sitting before the Full Court, tributes were paid to the Honourable Justice Gallop to mark his Honour's imminent retirement as a Judge of the Court. His Honour held office as a resident Judge of the Court from 1978 until 1982. Thereafter, when his Honour moved to Canberra to take up an appointment as a Judge of the Supreme Court of the Australian Capital Territory, his Honour held office as a non-resident judge of the Supreme Court of the Northern Territory. His Honour also held commissions as a Judge of the Federal Court of Australia (1978-2000), as a Judge of the Supreme Court of Christmas Island, as a Presidential Member of the Administrative Appeals Tribunal and as a member and subsequently as President of the Defence Force Discipline Appeal Tribunal.

Addresses were delivered by the Hon. Daryl Manzie MLA on behalf of the Attorney-General, Mr John Reeves QC on behalf of the Northern Territory Bar Association and Mr John Tippett on behalf of the Law Society of the Northern Territory. Some edited parts of these addresses follow:

MR MANZIE:

Your Honour, I rise on behalf of the Attorney-General, the Government of the Northern Territory and, indeed, on behalf of all Territorians, to pay tribute to Your Honour Gallop J who is to retire from the court upon attaining 70 years of age next month.

As a former Attorney-General, I am well aware of the substantial contribution you have made to the jurisprudence of the Northern Territory as a member of this court and, indeed, as a member of the Federal Court of Australia.

Your Honour attended Sydney Boys' High School and then Sydney University where you took a law degree, not with the intention of practicing law, but to enhance your prospects in the Commonwealth Public Service Commissioner's Office where you worked during your studies. You completed the degree and, at the age of 21, you were asked to go to Papua New Guinea for a six-month positing.

With the good wishes of your mother, you went. Whilst the work of approving appointments to the Public Service may have been tedious, your playing of a double bass in a jazz band announced your freedom. You even represented New Guinea in a rugby league international.

You returned for a second six-month stint, boosting the stocks of the band but upon return, you decided that a law degree would be more usefully employed in legal practice. You joined the Commonwealth Attorney-General's Department and were posted to Darwin in 1960 where Ron Withnall was the Crown Solicitor and the office was in Brown's Mart.

The court was a Sydney Williams hut behind John Lyons House and a photograph of it is presently situated near the Sheriff's Office. When you arrived, Kriewaldt J had died, leaving his associate, George Cridland, without a judge. So George went into private practice. He apart, you must be the longest serving legal practitioner in the Territory.

The court had no resident judge for quite a while and Industrial Court judges, Joske, Dunphy, Smithers and Eggleston JJ sat here and you appeared before them.

You left Darwin after two years and went into private practice and the firm is still called Sneddon, Hall & Gallop. You were there for 11 years before joining the ACT Bar in 1973. You took Silk in 1976. In 1978 you were invited onto this court and you served until 1982. You held commissions not only in this court but in the Federal Court, the Supreme Court of Christmas Island and as President of the Defence Force Disciplinary Appeal Tribunal.

You were commissioned, however, as a non-resident judge of this court and have served with great distinction. I have mentioned statutory senility for judges who reach 70. I am pleased to say the Northern Territory is not bound by Chapter 3 of the Constitution to lose the services of judges whose vast experience, ability and capacity does not desert them at such an age.

As the Chief Minister and Attorney-General announced on Wednesday at another function in Your Honour's honour, you will be invited to accept a commission as an acting judge of the court and we look forward to your return.

Today, however, this special sitting is to mark your special contribution to life and law in the Northern Territory.

May it please the court.

MARTIN CJ:

Mr Reeves, do you move?

MR REEVES:

I do Your Honour

On behalf of the members of the Northern Territory Bar Association, I bid Your Honour farewell from this court. We at the Bar will miss many aspects of Your Honour's unique style as a judge. Of course, Your Honour has strived to do justice in the many and varied

cases that you have dealt with in your time as a member of this Bench, but I think the unique style has more to do with other things.

One, I think, is your ability to quickly identify the central point in a case and dispose of the case with the minimum of costs and time. The other is, I think, your humour on the Bench; your ability to balance the very serious work that a judge has to do with some light humour.

In relation to the first, I am sure Riley J will not mind my telling this story at his expense. Many years ago, when Riley J was still a mere mortal, a QC, he received a brief to do a criminal appeal before the Court of Criminal Appeal. Mr Riley QC had not done a great deal of criminal work because his practice was mainly in civil litigation.

So he spent many days reading up on all the authorities and the materials preparing very carefully, as he always did. The morning of the appeal came around and Mr Riley QC discovered Your Honour Gallop J was on the Bench. Indeed, you were the presiding judge I think.

Your Honour was, of course, a very experienced criminal barrister. You had commenced work as a prosecutor in Darwin under the late Ron Withnall in the 60's and had practiced in that field for many, many years, so crime was your forte.

After appearances were announced and Mr Riley was about to commence his submissions, Your Honour said: 'Just a moment, Mr Riley. There really is only one point in this case isn't there?' Not being too sure whether it was the point or points he intended to raise, Mr Riley, being the good counsel he was, said: 'Yes Your Honour'. Fortunately for him, Your Honour went on to identify the point and then said: 'We don't need to hear from you Mr Riley. We'll hear from the Crown'.

The Crown did not have the answer so Mr Riley won the appeal. He confessed to us later in chambers that it was not the point that he had identified.

So that is an example of Your Honour's ability to quickly identify the central point. As to your Honour's humour, I can give a couple of examples, very recent examples, of that. They come from the 3-week appeal that Your Honour has had to sit through in the last three weeks.

At one point in the last week or so, I was addressing Your Honour on demeanour and the importance of a trial judge's findings. Your Honour asked: 'Whatever became of the idea that on appeals like this you'd run a video of the witness and you could judge his demeanour from the video? I did not have the answer to that. I referred His Honour to a decision of Kirby J where he discussed it and I said: I don't

know precisely why it is that video recordings of trials have been rejected at appellate court level in the United States’.

There was a bit of to-ing and fro-ing and then Your Honour said: “Well, I think it’s this. The Supreme Court in the United States has said that it’s because appellate judges would rather come down out of the hills when the battle was over and shoot the wounded”.

Earlier on, Mr Maurice QC was emphatically making a point to the Bench, as only Mr Maurice QC can do. He said: ‘Your Honours, it was all finished. The horse had bolted, the milk was spilt, the cat was out of the bag. It was all too late’. Gallop J: ‘You left out the fat lady’. And that is from the transcript.

Fortunately for us, Your Honour, we are aware that Your Honour has accepted appointment as an acting judge so we will hear more of that sort of humour, along with the seriousness of your work and we are sure that Your Honour’s unique style will continue in your work as an acting judge.

So can I conclude by saying farewell for now, but we hope to see you soon.

MARTIN CJ:

Do you move Mr Tippett?

MR TIPPETT:

If the court pleases

Your Honour has always enjoyed a good social occasion, so it comes as no surprise that you have connived to engineer not one, but two farewells from this court. The first was on 4 May 1982. Sitting with you on the Bench on that occasion was Forster CJ and Toohey, Nader and Williams JJ.

You had been a judge of the Northern Territory Supreme Court since May of 1978. On that particular occasion, Forster CJ remarked: ‘It would be too much to say that Your Honour and I have always seen eye to eye in everything’. It was perhaps, Your Honour, a delicate but judicially semantic way of telling the assembled throng that in fact Your Honour always liked a good argument, which, in fact, is true – generally, the argument that Your Honour is advancing at the time.

You have always been a person considered, Your Honour, as ‘your own man’. As an advocate you quickly developed an extensive reputation. In your days as a prosecutor, you went under the sobriquet of ‘Boots and All Gallop’, a shorthand way of describing Your Honour’s boundless enthusiasm for every task you were called upon to embrace at the time.

Your presence on the Bench has always been imposing and will continue, I understand. Like an articulate sphinx you direct the traffic

of the courtroom. An appearance before Your Honour can be a redoubtable experience. In fact, Your Honour, for some advocates it can be remembered for years afterwards by others, forever – and I think I fall into the latter category. It can well be said of you that when you leave this Bench you will not be forgotten.

Your Honour of course still has a hankering for the Bar table and if counsel appearing before you engages in some expression of dismay because of Your Honour's latest disadvantageous ruling, Your Honour's very distinctive tones of gentle encouragement can be heard across the body of the courtroom: 'You're playing on the A-grade now

Tippett', or whoever any other unfortunate character happens to be the time.

On appeal, of course, the atmosphere is far more refined. It has been known to be the case that just as counsel is beginning to carefully develop an argument that looked like an absolute corker the night before, the silence of the courtroom is shattered with: 'That's not your best point, Mr Tippett. Next ground'.

Your Honour was once a keen rugby player and the courtroom scrum has always come to you as second nature. There are, of course, aspects to Your Honour's character. Your erudition and mastery of the cases that you have sat on in this Territory are

well shown, Your Honour, in your time as a judge of this court courts, a breadth of knowledge of the law. Of course, it has been disclosed as mighty. That, in itself, would be really a mere detail if it were not for your concern for the people of the Northern the legal profession that represents them.

The people of the community have been given a great gift of your experience and that gift can be summed up, Your Honour, in remarks made by Wells and Sangster JJ in the case of *Fingleton v Ivanoff*. If I may just read:

"The community is entitled to expect a high standard from all courts. How lofty and inflexible that standard is was never better expressed than by the great judge and jurist Lord Bowen who, in the language of his age, said: 'There is no human being whose smile or frown, there is no government, tory or liberal whose favour or disfavour can start the pulse of an English judge on the bench or move by one hair's breadth the even equipoise of the scales of justice. Those may be words of rhetoric but they are also the words of common sense and sound policy'."

If it please the court, they are also words that describe Your Honour's indelible mark on the justice system of the Northern

Territory. The legal profession of the Northern Territory stands grateful.

May it please the court.

MARTIN CJ:

Does Your Honour care to respond?

GALLOP J:

Thank you Mr Manzie; thank you Mr Reeves; and thank you Mr Tippet.

It is only occasions like this when counsel can get away with such outrageous hyperbole. I have heard Judges say on previous occasions like this that: 'If my mother and father were here, they'd be very proud to hear such remarks made about their son. My father would be especially proud and my mother would believe them.

When I left Darwin and was farewelled, as Tippet says, on 4 May 1982, I tried to say, in my bumbling fashion, how grateful I was to my judicial brethren, the profession and everyone else who came along on that day. And here I am, almost 20 years later, doing it again and I do it again with no less sincerity.

It has been my good fortune to sit in this court from time to time, even when I had left it as a regular member of the court and had taken up my primary responsibility from then on, on the Supreme Court of the Australian Capital Territory. The Chief Minister of the day, one Paul Everingham, did me a great honour in asking me to retain my commission as a judge and my Chief Justice's from time to time since then have graciously asked me if I would be available to come up here.

Whenever I was not committed to some judicial work in another court, I have always come – maybe twice a year – and it has always been a great satisfaction to me to sit back on this Bench and to sit with the judges of this court. I could not have fared better if I had chosen my judicial brethren myself.

Austin Asche, whom I am delighted to see on the Bench with us today, was a wonderful Chief Justice and the present Chief Justice has made me very welcome. I am very grateful for that.

It has been my privilege always to sit on this Bench in this beautiful courthouse with these highly professional hard-working judges. It is a beautiful courthouse. Look at this furniture, look at the lighting, listen to the acoustics. I have been to courts all round the world and I have never seen a better courthouse than this.

I am fortunate to have enjoyed a very happy relationship with the Bar and the rest of the legal profession. We do have some fun from time to time. It is also pleasing to note how much practitioners have improved in all aspects of legal work. They have really advanced.

There is room for some informality from time to time, but it is good to note that they always wear shoes to court and they do not leave their crumbs on the Bar table from the Big Mac or something they have just had.

Of course there are some characters amongst them. There are people like – no I will not say ‘like’. There is the water fetishist that cannot leave the jug and the water alone; there is the key jangler, you know, and the pen clicker; and those who indulge the judge’s diseases of pomposity and talkativeness. We have all got our place.

I wish to express my thanks to the profession for their contribution to the happy relationship that exists between the profession and the court. The profession is, I can see, expanding in numbers and displaying greater expertise. Judges know that the better the presentation of cases, the easier the judge’s life is. That is why litigants person present special difficulties in the courts.

Last October in Edinburgh, I asked Bingham LCJ, the Lord Chief Justice of England and Wales, what courts could do when litigants appeared in person. He patted me on the head and said: ‘Just show urtesy and listen’. I have tried that. I do not do either very well and mostly it does not work anyway.

I express my thanks also to the secretaries and associates of the other judges in chambers. They are largely responsible for the smooth operation of their judge’s court proceedings and they have always been most helpful to me and my staff when we have come up here and intruded upon their little private area.

I also thank the Registry staff, court orderlies, the library staff and court reporting. Because I am going to be coming back here as an acting judge, I am going to need their loyalty and efficiency in the future.

Mr Tippett makes a good point. These places are not just salons of manners. Serious business is done. You are expected to play A-grade, you are kicking a ball about down the park. But you can have some fun.

I remember Mr Pauling appearing in a case one day and he was brilliant. The trouble was he did not know the difference between a girder and a joist. He was cross-examining this builder and the builder finally got a bit exasperated and said: ‘With respect Mr Pauling, you don’t seem to know the difference between a girder and a joist’, which was too much for the judge because he said: ‘That’s what I thought too. Mr Pauling, you don’t seem to know the difference between a girder and a joist’. ‘Of course I do, Your Honour’. ‘Well, tell us. What’s the

difference?’ Pauling stood up and he said, ‘Girder wrote Faust and Joist wrote Ulysses’. That was the end of that.

So we do have some fun. I apologise if anybody heard me recite this poem the other day, but it says a lot:

“A judgment surely need not bore,
The judge can postulate the law,
Adjudicate on point of fact
And do so with finesse and tact,
But still engage in moderate fun,
A quip, a joke, a harmless pun.
It’s rather nice if judgment draws on
Shakespeare, Pope or Henry Lawson,
And why should critics get all snooty
At metaphors from sport, like footie?
So I don’t think that one should curb
Adventurous use of noun and verb
And why not play up the gallery,
At least have fun, if not much salary”

That is just about a judge’s life. So I say not goodbye, but au revoir.

MARTIN CJ:

Thank you, Your Honour.

May I say on behalf of the court, we heartily concur in all that has fallen from the Bar table.

Ladies and gentlemen, the court will shortly adjourn and you are invited to join us in the lobby of the courthouse for refreshment and to talk to His Honour himself, if you see fit.

Court will now adjourn.