

2008-2009

THE
NORTHERN
TERRITORY
LAW REPORTS

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

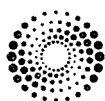
EDITOR-IN-CHIEF
CAMERON FORD

VOLUMES 23-24

LAWBOOK CO.

2010

REPORTER
CAMERON FORD



THOMSON REUTERS

2010 Thomson Reuters (Professional) Australia Limited

ABN 64 058 914 668

Lawbook Co.

Published in Sydney

© The Northern Territory Council of Law Reporting
Printed by Ligare Pty Ltd, Riverwood, NSW

ISSN 1038-9237

THE COUNCIL OF LAW REPORTING FOR THE
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SUPREME COURT OF THE NORTHERN
TERRITORY OF AUSTRALIA

DURING THE CURRENCY OF THIS VOLUME

CHIEF JUSTICE

THE HONOURABLE JUSTICE BRIAN ROSS MARTIN

ACTING CHIEF JUSTICE

THE HONOURABLE JUSTICE DAVID NORMAN ANGEL

JUDGES

THE HONOURABLE JUSTICE DAVID NORMAN ANGEL

THE HONOURABLE JUSTICE DEAN MILDREN RFD

THE HONOURABLE JUSTICE SALLY GORDON THOMAS AM
(retired 6 August 2009)

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(4 February 2009-8 February 2009)

THE HONOURABLE D P LAWRIE MLA
(appointed 9 February 2009)

MEMORANDUM

FAREWELL CEREMONIAL SITTING FOR THE HONOURABLE JUSTICE SALLY THOMAS AM

PRESIDING JUDGES:

THE HON CHIEF JUSTICE B R MARTIN
THE HON JUSTICE D MILDREN RFD
THE HON JUSTICE S THOMAS AM
THE HON JUSTICE T RILEY
THE HON JUSTICE S SOUTHWOOD
THE HON JUSTICE J REEVES
THE HON ACTING JUSTICE T OLSSON AO MBE RFD ED
THE HON ACTING JUSTICE H OLNEY AM

IN ATTENDANCE:

THE HON AUSTIN ASCHE AC QC
THE HON BRIAN F MARTIN AO MBE QC
THE HON JOHN GALLOP AM RFD QC
THE HON JOHN NADER RFD QC

This is an edited transcript of the proceedings.

The Attorney General, the Hon Delia Lawrie MLA. I rise on behalf of the Northern Territory Government and, indeed, on behalf of all Territorians to pay tribute to the service of your Honour, Justice Thomas. It is a great honour to be here today to speak in celebration of an outstanding career with numerous achievements. It is a career brimming with firsts.

Whilst your Honour would be far too modest to make the claim, it is fair to say that you have been a trailblazer for women in the legal profession and in the Northern Territory, a profession that was until relatively recent times largely comprised by male practitioners.

Your Honour arrived in the Northern Territory in 1978 after taking up the position of magistrate, and so began your Honour's career of firsts, as you were the Territory's first female magistrate. In 1985 your Honour became the first woman appointed as Acting Chief Magistrate and then the Territory's first female Chief Magistrate following the retirement of Mr Gerry Galvin CM the following year.

After six years as Chief Magistrate, on 30 July 1992 your Honour became the first female appointed to the Bench of this Court. Your Honour's tenure as a judicial officer has been characterised by your courtesy, your patience and your sense of calm. These are qualities that are universally admired and

appreciated by those practitioners who appear before your Honour and those litigants and witnesses who come before the Court.

Your Honour is also renowned for your common sense, your commitment to social justice and your ability to sort out where the true merits lie in a particular matter from among all the legal technicalities. These traits have been the hallmark of your Honour's long and distinguished career in the Territory's justice system.

But your Honour's first achievements are not limited to the legal profession. In 1993 your Honour was appointed as an honorary Colonel in the Australian Army Cadet Corps, Northern Region, the first female not in a vice-regal position to hold such an appointment. Your Honour was also one of the inaugural members of the Northern Territory University's Council.

Your Honour's strong sense of community service is also illustrated by the many positions and roles you have undertaken including as chair of the Northern Territory Legal Aid Commission, regional chair of the Northern Territory Branch of the Winston Churchill Memorial Trust and a council member of the Australian Institute of Judicial Administration.

Your Honour is also the patron of a number of charitable and other organisations too numerous to list here but it would be remiss not to mention, in particular, your Honour's work with the NT AIDS Council, the Women Lawyers Association, the Cancer Council and the National Association for the Prevention of Child Abuse and Neglect.

Your Honour has also had a longstanding involvement in sport and the arts. You have been a member of the board of the Darwin Theatre Company and you are a longstanding member and Territory President of Aussie Masters Swimming. Your Honour's dual interest in swimming and theatre came together in 1992 when the Darwin Theatre Company put on a piece titled 'Overcome by Chlorine' which the publicity blurb that almost was 'a play about men, mania, swimming and pool maintenance'.

Your Honour's extensive service to the community was recognised through your admission as a Member of the Order of Australia in June 2000 for service to the community, particularly through the Territory Winston Churchill Memorial Fellowship Committee to Tertiary Education and to the Law.

Together with all those other achievements, your Honour has raised two sons, Chris and Nick, both of whom are here in Court today to join in celebrating your Honour's career.

On behalf of the Northern Territory Government, I thank your Honour for more than 30 years of distinguished service not only as a judicial officer but also to the broader Territory community. We wish your Honour every success and happiness for the next chapter of your life.

President of the Northern Territory Bar Association, Mr Barr QC: May it please the Court. On behalf of the Northern Territory Bar Association, I join with the people present today from all walks of life who have come together to above all show their respect to your Honour, Justice Thomas, to say well-done and farewell.

The thing I wish to congratulate you on most sincerely is the achievement of more than 30 years of service to the legal system of the Northern Territory as a magistrate for almost 14 years, seven years as Chief Magistrate and, more recently, as a Supreme Court Judge for almost 17 years.

The Attorney's speech has given a very good summary of your Honour's career as a judicial officer and your record of service to the community outside of the law. What a Judge does outside the law has great significance in ways that aren't generally well-known but your Honour's extensive involvement in the wider community, its institutions and organisations - whether they be educational or social, professional, welfare, the arts even defence, if serving in the army cadets can be considered a contribution to the defence of the nation.

All of these things put lie to a common misconception that is held about Judges that they live in ivory towers, that they are removed from the real world, that they do not understand ordinary people. In a sense the misconception is that somehow or other they are completely insulated from bad noise and bad smells. It is a nonsense. It really is a nonsense, but it still pervades. It emerges from time to time. The only way it will disappear finally is if our Judges continue with their approach to being out there in the community, to be seen with their children and their grandchildren, to support community endeavours as your Honour has done thereby making loyal and firm friends, enlisting lifetime support not only for you, but for the Judges personally who sit alongside you and for the Court itself and the legal system in which you all serve. It is an extremely important aspect that we cannot overlook today.

Throughout your service, you have always regarded yourself as a servant of the law. You have done so without ego, without things to prove, without baggage, as it is often called. On the Bench, your Honour has always been an attentive listener, genuinely more interested in listening than speaking. You assert yourself quietly, only when it is necessary and again always very courteously to the lawyers who have the pleasure of appearing before you.

You have all of the qualities spoken of by the Attorney and some still. You have great empathy and compassion and you have an unerring sense of and commitment to achieving justice in every case that you decide or preside over. As a criminal Judge, your Honour has successfully maintained the delicate balance between providing justice to victims of crime and their families, all the while ensuring scrupulously fair trials for accused people and just sentences for those found guilty. It is a hugely difficult task which the community asks of you and your fellow Judges every working day. It is a task which your Honour has steadfastly carried out with great dedication.

On 10 August 1992, your Honour made a brief and gracious speech at a ceremonial sitting to mark your Honour's appointment as a Judge of this Court. At the very end of that speech you said these words 'I hope most of all that I will be a wise and good Judge for the community of the Northern Territory'. Your Honour, there is no doubt today that your Honour's mission has been accomplished.

The Bar bids you farewell for now and wishes you the fine retirement that you truly deserve.

Vice-President of the Northern Territory Law Society, Mr Storey: Clearly, the constitutional duty of a Court to determine disputes before it according to law is a key element in making the court "honourable". More than this though, it occurred to me that really it is the quality of the Judges of a Court that lead us to consider it as honourable. On reflecting on this point further, it seemed to me there were five attributes that were important.

The first of these is conscientiousness – the commitment to attend to one's duties with diligence. The second was intelligence – the legal and analytical skill to identify and resolve the matters in dispute before one according to law. Third, it occurred to me was considerateness – the ability to appreciate that life is not perfect and at times neither are counsel, their instructors and their clients. Fourth to me was politeness – having appreciated the weaknesses of those appearing before one, to deal with those foibles in a civil manner. And fifth was effectiveness – the ability to get the job before one done, despite the absence of the perfect world as I have indicated.

I have not had the pleasure of appearing before your Honour other than in ceremonial sittings, but in speaking to my colleagues about your Honour's time on the bench, inevitably the adjectives I have just described or their synonyms were used to describe your Honour's work. However, while these attributes are important and will lead a practitioner to consider a Court honourable, to me the final key attribute is engagement with the community. It is this engagement that will lead the community that we all serve to also recognise their Court as honourable.

In this regard I am much more familiar with your Honour's work. Your lengthy service as a council member and deputy chancellor of the Charles Darwin University and its predecessor, of course, to which I have some affiliation, is but one example of this that I am personally familiar with and the Attorney has outlined many, many more.

For these reasons, your Honours, without hesitation I can submit that Justice Thomas' time on the Bench has continued and enhanced the reputation of this honourable Court.

THOMAS J: I am very honoured today that the ceremony has been organised to farewell myself as a retiring Judge.

A farewell ceremony such as this is part of a longstanding tradition of the Supreme Court. We have many such traditions. Early in 2008, I was the presiding judge in Alice Springs. During the course of my sittings, we had another traditional ceremony participated in by Supreme Courts all around Australia that is called the Opening of the Legal Year. Nowadays it is probably a little odd to call it an opening because, in fact, we never close. We just keep rolling along all year through.

We still, however, maintain the ceremony that has existed for centuries of having an opening of the legal year. We don all the regalia that we are wearing today. We invite members of the legal profession and others in the community to join us. In the Northern Territory we form a procession and process from a point outside the courthouse into Court.

The actual ceremony is held in a courtroom, presided over by the officiating clergy of all denominations. Under their guidance we reflect on our role as Judges and as members of the legal profession as to how we should best serve the community in the administration of justice.

In Alice Springs it means those in the procession will don their robes of office and walk from the back entrance to the Court a short distance along a main street in Alice Springs, rounding the corner of the building, mounting the front steps and through the front entrance into a courtroom. It does mean on this short journey that we have to pass through a bus stop. Now, this can result in some members of the local community making comments as we swoop past that could not always be described as complimentary.

At the time of this ceremony early last year, I asked a young woman lawyer if she was intending to participate in the opening of the legal year. 'Oh, no' she said. 'I don't believe in tradition'. She was, of course, fortified in her stand by the comments of the famous American car maker, Henry Ford, whose interview was published in the Chicago Tribune on 25 May 1916. Henry Ford said:

History is more or less bunk. It's tradition. We don't want tradition. We want to live in the present and the only history that is worth a tinker's damn is the history we make today.

Perhaps it is only with the passage of time and participating in various traditions we have in our society that we start to value them. I believe traditions can bind our society together and provide opportunity to acknowledge significant events and to celebrate. There are, of course, traditions that can be offensive or divisive. We just need the wit to distinguish between what we should keep and what we should abandon.

The Russian composer, Igor Stravinsky, said in his work, *Poetry of Music*:

Tradition is entirely different from habit, even from an excellent habit, since habit is by definition an unconscious acquisition and tends to

become mechanical, whereas tradition results from a conscious and deliberate acceptance. Tradition presupposes the reality of what endures.

We, in Australia, are all bound by the one law. I would not think it appropriate to do otherwise. Whilst we are all under the same laws, underpinning this is a wide-ranging tapestry of traditions of many cultures, ranging from celebrating Chinese New Year to the festival of Diwali celebrated in the Indian community, a celebration for American Independence Day, the Storming of the Bastille, the Blessing of the Fishing Fleet and many others.

As a Magistrate and then a Judge I have been exposed, as have many of us in the legal system, to the many traditions held dear in Aboriginal communities. I have always felt very privileged as a Judge to have presided over so many cases that involve people who come with traditions of a culture different to mine. A number of those involve Aboriginal culture. Communication in Aboriginal societies and the passing down of traditions has been essentially oral through the telling of stories, through painting and through dance.

Recently I concluded a mediation involving elders at the Aboriginal community in Ngukurr and the Northern Territory Police Force. It was initiated by a civil claim brought by one of the elders against the Northern Territory Police Force. It was scheduled for many weeks of court hearing time. The parties and the presiding Judge asked if I would conduct a mediation prior to the trial commencing in endeavour to find an agreed solution. The mediation involved three day trips to Ngukurr and much discussion with the elders and with senior members of the Northern Territory Police Force.

Eventually an agreed resolution was achieved after a lot of hard work by the lawyers for both sides and thanks to the great spirit of co-operation on the part of the Aboriginal elders and senior members of the Northern Territory Police Force. A protocol was established for police and community relations, agreed to by all parties and duly signed by the 14 elders at Ngukurr community and the Deputy Commissioner of Police.

On the day of the signing of the agreement, the community at Ngukurr had organised a celebration. Hundreds attended including a group of about 40 Aboriginal men, women and children, painted on body and face who performed a number of dances. I asked David Daniels, the Aboriginal elder who had been at the centre of the dispute if he could tell me what a particular dance meant. He did and then he said it was a dance that talked about the significance of the event for the whole community. He said, 'It's a tradition, you know'.

I thought afterwards that whilst we are all governed by the same laws, it is an understanding and respect for each other's traditions that binds us together. It behoves us all to understand the traditions of others. As David Daniels himself said when he addressed the community at Ngukurr on the day of these celebrations 'We must respect each other. It is the only way to move forward'.