



BETWEEN:
NORTHERN TERRITORY OF
AUSTRALIA

Appellant

AND:
SOULEYMANE SANGARE

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

PART I: PUBLICATION ON THE INTERNET

1. This outline is in a form suitable for publication on the internet.

PART II: STATEMENT OF ARGUMENT

A. Statutory source of Court's power to award costs

2. The Supreme Court of the Northern Territory, known as the Court of Appeal when exercising appellate jurisdiction (s51(2)) is given the power to award costs by:¹
 - (a) s14(c) of the *Supreme Court Act 1979* (NT) (**current SCA**), which confers on the Court such jurisdiction as was, immediately before the commencement of that Act, vested in or conferred on the former Supreme Court;
 - (b) s55(1) of the current SCA, which confers on the Court of Appeal power to exercise every power, jurisdiction and authority of the Supreme Court;
 - (c) s18(1) of the *Northern Territory Supreme Court Act 1961* (Cth) (**former SCA**), which provided that the (former) Supreme Court or a Judge has jurisdiction to award costs in all matters brought before the Court;
 - (d) s18(2) of the former SCA, which provided that, subject to Rules of Court and any law in force in the Territory, the costs of and incidental to all proceedings in the Supreme Court are in the discretion of the Court or Judge, and the Court or Judge has full power to determine by whom and to what extent those costs are to be paid.
3. The Court's power is now defined by Supreme Court Rule 63.03, which provides that the costs of a proceeding are in the discretion of the Court.

¹ Cf Submissions of the Amicus Curiae, [5].

B. The Court's error

4. The error of the Court below was that it failed to apply the principle that impecuniosity of the unsuccessful party is not a sufficient basis to deprive the successful party of its costs (**the principle**) (Reasons, [47]-[48], CAB 134). This comprises an error of principle within *House v The King* (1936) 55 CLR 499 at 505 which vitiates the exercise of the discretion.

C. General principles, not hard rules

5. As is well recognised, the “unfettered” or “unconfined” discretion of the Court as to costs permits of general principles or guidelines which guide the exercise of the discretion, rather than absolute, inflexible or hard legal rules.
 - *Oshlack v Richmond River Council* (1998) 193 CLR 72 at [65] per McHugh J, citing *Latoudis v Casey* (1990) 170 CLR 534 at 541; at [34]-[35] per Gaudron and Gummow JJ, citing *Latoudis v Casey* at 557 per Dawson J and *Norbis v Norbis* (1986) 161 CLR 513 at 537 per Brennan J.
6. The principle is equivalent to and consistent with other principles about costs:
 - (a) “the compensatory principle” – that orders for costs are to compensate the successful party, not punish the unsuccessful party;
 - (b) “the general rule that costs follow the event”; and
 - (c) the principle as to departure from the general rule – a successful party may be deprived of its costs due to factors connected with or leading up to the litigation.

D. Uniform endorsement of the principle across the country

7. The principle has been endorsed by intermediate appellate courts in all Australian jurisdictions except the Northern Territory.
 - *GJ v AS (No 4)* [2017] ACTCA 7 at [102]
 - *Scott v Secretary, Dept of Social Security (No 7)* [2000] FCA 1450 at [4]
 - *Board of Examiners v XY* [2006] VSCA 190 at [31]-[36], at [40]-[41]
 - *Marlow v Walsh* [2009] TASSC 40 at [23]
 - *Sochorova v Commonwealth* [2012] QCA 152 at [17]
 - *Machado v Underwood (No 2)* [2016] SASCFC 123 at [45]
 - *Smolarek v Roper* [2009] WASCA 124 (S) at [11]
 - *Re Felicity; FM v Secretary, Department of Family & Community Services (No 3)* [2014] NSWCA 226 at [60]-[61]
8. Consistently with these decisions, this Court should now endorse the principle. It has a sound policy foundation: see *Board of Examiners v XY* [2006] VSCA 190 at [33]-[34].

E. Nothing takes this case outside of the principle

9. The Amicus accepts the principle,² but submits that the Respondent's impecuniosity was a relevant matter which the Court below could properly take into account.³ That submission should not be accepted. There is no reason in this case to depart from the principle.
10. The futility of a costs order to compensate the Appellant (Reasons, [48]) is nothing more than the corollary of the Respondent's impecuniosity. The Amicus's reference to individual punishment or oppression of the individual by the state⁴ has no foundation in this case. There is nothing more than the effect of the costs order on the Respondent, which again is merely the corollary of impecuniosity.
11. The Respondent's visa status is not a matter which makes his impecuniosity relevant. Adverse costs orders are routinely made against unsuccessful visa applicants (see authorities in fn 13 of Appellant's Reply; see *MZARS v Minister for Immigration & Border Protection* [2017] FCA 177 at [36]; *WAEY v Minister for Immigration, Multicultural & Indigenous Affairs* [2003] FCA 1314 at [39]-[44]). The Amicus's suggestion⁵ that there are other matters not mentioned in the Court's reasons should not be accepted.

E. This Court should make the order the Court of Appeal should have made

12. This Court is in as good a position as the Court below to make the orders which the Court of Appeal should have made,⁶ as this Court commonly does when such an error is identified in the exercise of the costs discretion (see authorities in fn 19 of Appellant's Reply). The order should be made that the Respondent pay the Appellant's costs of and incidental to the proceedings in the Court of Appeal, and the Supreme Court. There is no reason why the costs of this appeal should not follow the event.

Dated: 11 April 2019


.....
Sonia Brownhill SC

² Ibid, [9].

³ Ibid, [15], [21].

⁴ Ibid, [18], [20].

⁵ Ibid, [27]-[28].

⁶ Cf Ibid, [26].

FILED IN COURT
BY LEAVE ON

11 APR 2019

High Court of Australia
Brisbane Circuit

NORTHERN TERRITORY SUPREME COURT.

No. 11 of 1961.

An Act to create a Supreme Court of the Northern Territory of Australia, in place of the Supreme Court previously established.

[Assented to 5th May, 1961.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Northern Territory Supreme Court Act 1961*.

2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-
ment.

3. This Act is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1-5).

Part II.—Constitution and Jurisdiction of the Supreme Court (Sections 6-18).

Part III.—Concurrent Administration of Law and Equity (Sections 19-28).

Part IV.—Registries, Seals and Officers (Sections 29-33).

Part V.—General Matters of Procedure (Sections 34-45).

Part VI.—Appeals (Sections 46-48).

Part VII.—Miscellaneous (Sections 49-55).

4.—(1.) Notwithstanding section eighteen of the *Northern Territory (Administration) Act* 1910-1959, the Supreme Court of the Northern Territory as established by law immediately before the commencement of this Act is abolished. Provisions with
respect to the
former Supreme
Court.

(2.) Subject to the Rules of Court and to any directions given by a Judge with respect to matters of practice and procedure—

(a) all proceedings in the former Supreme Court, whether civil or criminal (including proceedings by way of appeal) that were pending or uncompleted at the commencement of this Act may be continued and completed in the Supreme Court as if they had been instituted in that Court; and

(b) where, in relation to a judgment of a court given or pronounced before the commencement of this Act, an appeal lay, at the commencement of this Act, to the former Supreme Court (whether or not subject to conditions as to leave to appeal or other conditions), a like appeal, subject to the like conditions, if any, lies to the Supreme Court, and for that purpose the Supreme Court may exercise any power or jurisdiction that belonged to the former Supreme Court.

(3.) All judgments of the former Supreme Court subsisting at the commencement of this Act continue in force, and this Act and all other laws in force in the Territory apply in relation to them as if they were judgments of the Supreme Court.

(4.) The provisions with respect to appeals to the High Court that were contained in section twenty-one of the *Supreme Court Ordinance* 1911-1954 of the Territory continue, by force of this Act, to apply in relation to any judgment that was pronounced or made before the commencement of this Act.

(5.) Where any Act or Ordinance that was in force immediately before the commencement of this Act contained a reference to the former Supreme Court (including that Court under its previous name of the Supreme Court of North Australia), or an expression that included a reference to that Court, that reference or expression shall, from the commencement of this Act, be read as a reference to the Supreme Court, or as including a reference to the Supreme Court, as the case may be.

Definitions.

5. In this Act, unless the contrary intention appears—

- “additional Judge” means a Judge appointed under sub-section (2.) of section seven of this Act;
- “affidavit” includes, in relation to a person who conscientiously objects to taking an oath, a solemn affirmation or declaration in writing;
- “cause” includes a suit or criminal proceedings;
- “defendant” includes a person against whom relief is sought in a matter or who is required to attend the proceedings in a matter as a party to the proceedings;
- “Judge” or “Judge of the Supreme Court” means the Judge appointed under sub-section (1.) of section seven of this Act or an additional Judge and, in the expressions “the Supreme Court or a Judge”, “the Court or a Judge” and “the Court or Judge”, means a Judge sitting in Chambers;
- “judgment” includes a decree, order, conviction or sentence, and a refusal to make a decree or order;
- “matter” includes any proceeding in the Supreme Court, whether between parties or not, and also any incidental proceeding in a cause or other proceeding;
- “Ordinance” means an Ordinance in force under the *Northern Territory (Administration) Act 1910–1959*;
- “plaintiff” includes a person seeking relief against another person by any form of proceeding in the Court;
- “practice and procedure” includes matters relating to costs, the method of pleading, the attendance of witnesses, the custody or bail of accused or convicted persons and the enforcement and execution of judgments;
- “suit” includes an action or original proceeding between parties of a civil nature;
- “the Court” means the Supreme Court;
- “the former Supreme Court” means the Supreme Court of the Northern Territory as established by law immediately before the commencement of this Act;
- “the Judicature Act” means The Supreme Court of Judicature Act, 1873 of the United Kingdom;

- “ the Master ” means the Master of the Supreme Court, and includes a Deputy Master of the Supreme Court;
- “ the senior Judge ” means the Judge appointed under sub-section (1.) of section seven of this Act or, if that Judge is, by reason of absence or for any other reason, unable to discharge the duties of his office or there is no Judge holding office by virtue of appointment under that sub-section, the senior additional Judge who is available for the discharge of duties under this Act;
- “ the Sheriff ” means the Sheriff of the Territory, and includes a Deputy Sheriff of the Territory;
- “ the Supreme Court ” means the Supreme Court of the Northern Territory of Australia, as constituted by this Act;
- “ the Territory ” means the Northern Territory of Australia.

PART II.—CONSTITUTION AND JURISDICTION OF THE
SUPREME COURT.

6.—(1) There shall be a superior court of record to be known as the Supreme Court of the Northern Territory of Australia. Establishment of Supreme Court.

(2.) The Court shall consist of the Judge or Judges for the time being holding office by virtue of appointment under the next succeeding section.

7.—(1) The Governor-General may, by commission issued in pursuance of this sub-section, appoint a person who is or has been a practising barrister or solicitor of the High Court or of the Supreme Court of a State of not less than five years' standing to be a Judge of the Supreme Court. Appointment of Judge and additional Judges.

(2.) The Governor-General may, by commission issued in pursuance of this sub-section, appoint a person who, or persons each of whom, is a Judge of another court created by the Parliament to be a Judge or Judges of the Supreme Court.

(3.) The Judges appointed under the last preceding sub-section have seniority as Judges of the Supreme Court according to the dates of their commissions.

8. A person may be a Judge of the Supreme Court notwithstanding that he is also a Judge of another court created by the Parliament, or is also the holder of a judicial office in relation to a Territory of the Commonwealth other than the Northern Territory of Australia, by virtue of an appointment made either before or after his appointment as a Judge of the Supreme Court. Holding of other judicial offices.

Security of the
peace and for
good behaviour

17. The Court or a Judge has authority to hold to security of the peace and for good behaviour in matters arising under the laws in force in the Territory.

Costs.

18.—(1.) The Supreme Court or a Judge has jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

(2.) Subject to Rules of Court and to any law in force in the Territory, the costs of and incidental to all proceedings in the Supreme Court, including the administration of estates and trusts, are in the discretion of the Court or Judge, and the Court or Judge has full power to determine by whom and to what extent the costs are to be paid.

(3.) Nothing in this section affects the practice that would otherwise be followed in any criminal matter or in proceedings on the Crown side of the Court.

PART III.—CONCURRENT ADMINISTRATION OF LAW AND EQUITY.

Law and equity
to be
concurrently
administered.

19. Subject to the express provisions of any other Act or of an Ordinance, in every civil matter commenced in the Supreme Court, law and equity shall be administered according to the provisions of this Part.

Equities of
plaintiff.

20. If a plaintiff claims to be entitled to an equitable estate or right, or to relief on an equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by any defendant in the matter, or to relief founded upon a legal right that could in England immediately before the commencement of the Judicature Act only have been given by a Court of Equity, the Supreme Court shall give to the plaintiff the same relief as ought then to have been given by the English Court of Chancery in a suit or proceeding for the like purpose properly instituted.

Equities of
defendant.

21. If a defendant claims to be entitled to an equitable estate or right, or to relief on an equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a plaintiff in the matter, or alleges a ground of equitable defence to a claim of the plaintiff, the Supreme Court shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, the same effect, by way of defence against the claim of the plaintiff, as the English Court of Chancery ought, immediately before the commencement of the Judicature Act, to have given if the like matters had been relied on by way of defence in a suit or proceeding instituted in that Court for the like purpose.

Northern Territory Supreme Court (Repeal) Act 1979

No. 85 of 1979

An Act to repeal the *Northern Territory Supreme Court Act 1961*, and to provide for related matters.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

- | | |
|--|--|
| Short title | 1. This Act may be cited as the <i>Northern Territory Supreme Court (Repeal) Act 1979</i> . ¹ |
| Commencement | 2. This Act shall come into operation on a date to be fixed by Proclamation. |
| Interpretation | 3. In this Act—
“commencing date” means the date of commencement of this Act;
“judgment” means a judgment, decree or order, whether final or interlocutory, or a sentence;
“proceeding” means a proceeding, whether between parties or not, and includes—
(a) an incidental proceeding in the course of, or in connection with, a proceeding;
(b) a judgment;
(c) an appeal; or
(d) an application for leave or special leave to appeal;
“Supreme Court” means the Supreme Court of the Northern Territory of Australia. |
| Repeals | 4. The Acts set out in the Schedule are repealed. |
| Proceedings in High Court and Federal Court of Australia | 5. For the purposes of—
(a) any proceedings in the High Court or the Federal Court of Australia pending immediately before the commencing date (including proceedings the hearing of which had not commenced before that date) or instituted on or after that date, being proceedings in relation to proceedings in the Supreme Court as established by the <i>Northern Territory Supreme Court Act 1961</i> ; or |

- (b) any right of appeal that lay immediately before the commencing date (whether or not subject to conditions as to leave to appeal or other conditions) to the High Court or the Federal Court of Australia from a judgment of the Supreme Court as so established,

the Supreme Court as established by the *Supreme Court Act* 1979 of the Northern Territory shall be deemed to be a continuation in existence, without any change in identity, of the Supreme Court as established by the *Northern Territory Supreme Court Act* 1961.

6. The repeals made by section 4 shall not be taken to affect an appointment of a Judge of the Federal Court of Australia made before the commencing date.

Judges of
Federal
Court of
Australia

7. Where a law of the Commonwealth that was in force immediately before the commencing date and continues in force on the commencing date contains a reference, or an expression that includes a reference, to the Supreme Court, then, except so far as the context otherwise requires, that reference shall not be taken, on or after that date, as not being or as not including, as the case may be, a reference to the Supreme Court as established by the *Supreme Court Act* 1979 of the Northern Territory.

References
in laws of the
Common-
wealth to
Supreme
Court

SCHEDULE

Section 4

ACTS REPEALED

Northern Territory Supreme Court Act 1961
Northern Territory Supreme Court Act 1968
Northern Territory Supreme Court Act 1971
Northern Territory Supreme Court Act 1973
Northern Territory Supreme Court Act 1975
Northern Territory Supreme Court Amendment Act 1976
Northern Territory Supreme Court Amendment Act 1978
Northern Territory Supreme Court Amendment Act (No. 2) 1978

NOTE

1. Act No. 85, 1979; assented to 31 August 1979.

SUPREME COURT ACT

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Proceedings in, and appeals to, former Supreme Court
4. Judgments and Rules of former Supreme Court
5. Records of former Supreme Court
6. References to former Supreme Court, &c.
7. Judges of former Supreme Court
8. Officers of former Supreme Court
9. Interpretation

PART II—CONSTITUTION AND JURISDICTION OF THE
SUPREME COURT*Division 1—Constitution*

10. Establishment
11. Constitution
12. Superior court of record
13. Principal seat, &c.

Division 2—Jurisdiction

14. Jurisdiction
15. Exercise of jurisdiction
16. Chambers
17. Open Court
18. Declaration of right
19. Determination of matter completely and finally
20. Orders and writs

Division 3—Full Court

21. Full Court
22. Legal practitioners
23. Majority judgments
24. Reserved judgments

Division 4—Exercise of Jurisdiction by Master and Referees

25. Jurisdiction by Master
26. Reference for report

27. Reference for trial
28. Powers
29. Powers of Master
30. Effect of judgment
31. Appeal

Division 5—Judges

32. Appointment of Judges
33. Seniority
34. Chief Justice
35. Acting Chief Justice
36. Offices of profit
37. Oath of office
38. Retirement
39. Resignation
40. Removal from office
41. Remuneration

Division 6—Registries, Seals and Officers

42. Registry
43. Seal
44. Stamps
45. Judicial notice of Seal
46. Appointment of Master
47. Powers of Master
48. Appointment of Deputy Masters
49. Powers of Deputy Masters
50. Other officers

PART III—COURT OF APPEAL

51. Right of appeal
52. Exercise of appellate jurisdiction
53. Appeal from interlocutory judgment
54. Evidence on appeal
55. Form of judgment on appeal
56. New trial
57. Stay of proceedings
58. Senior Judge presides
59. Majority judgments
60. Reserved judgments

PART IV—CONCURRENT ADMINISTRATION OF LAW AND EQUITY

61. Law and equity
62. Equities of plaintiff

63. Equities of defendant
64. Counter claims and third parties
65. Equities appearing incidentally
66. Defence or stay instead of injunction or prohibition
67. Common law and statutory rights
68. Rules of equity to prevail
69. Mandamus, injunctions and receivers
70. Assignment of chose in action

PART V—PRACTICE AND PROCEDURE

71. Rules of Court
72. Directions by Chief Justice
73. Evidence
74. Affidavits
75. Appearance
76. Orders and commissions for examination of witnesses
77. Non-appearance or absence of some defendants
78. Intervention of Attorney-General
79. Notice to Attorney-General
80. Amendment of defect in proceedings
81. Formal defects
82. Further hearings at another place
83. Change of venue
84. Interest up to judgment
85. Interest on judgments
86. Rules of Court
87. Regulations

SCHEDULE

SUPREME COURT ACT 1979

No. 109 of 1979

An Act to create the Supreme Court of the Northern Territory of Australia in place of the Supreme Court previously established by the *Northern Territory Supreme Court Act 1961* of the Commonwealth

[Assented to 24 September 1979]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Supreme Court Act 1979*.

Commencement

2. The several Parts of this Act shall come into operation on such dates as are fixed by the Administrator by notice in the *Gazette*.*

Proceedings in, and appeals to, former Supreme Court

3. Subject to the Rules and to any directions given by a Judge with respect to matters of practice and procedure—

- (a) all proceedings in the former Supreme Court, whether civil or criminal (including proceedings by way of appeal) that were pending or incomplete at the commencement of this Act may be continued and completed in the Court as if they had been instituted in the Court; and
- (b) where, in relation to a judgment of a court, authority, board, tribunal, person or other body given or pronounced before the commencement of this Act, an appeal lay, at the commencement of this Act, to the former Supreme Court (whether or not subject to conditions as to leave to appeal or other conditions), a like appeal, subject to the like conditions, if any, lies to the Court, and for that purpose the Court may exercise any power or jurisdiction that belonged to the former Supreme Court.

Judgments and Rules of former Supreme Court

4.(1) The judgments of the former Supreme Court subsisting at the commencement of this Act continue in force, and this Act and all other laws in force in the Territory apply in relation to them, as if they were judgments of the Court.

*The date fixed was 1 October, 1979 (see *Northern Territory Government Gazette* No. 518 of 28 September, 1979, page 1). Sections 51-60—date not fixed at 1 January, 1980.

(2) The Rules of Court that were in force under the repealed Act, including rules that were continued in force by that Act, immediately before the commencement of this Act continue in force, *mutatis mutandis*, and subject to any directions of the Court in a particular case, as if made under this Act, but may be amended or repealed by Rules of Court made under this Act.

5. The records of the former Supreme Court, and all records of the superior court of record of the Territory that were kept under a law at any time in force in the Territory and that, immediately before the commencement of this Act, were in the custody or control of the former Supreme Court or of an officer of that Court, shall be incorporated with, and shall be deemed to form part of, the records of the Court.

Records of former Supreme Court

6.(1) A reference, in a law that was in force in the Territory before the commencement of this Act, to the former Supreme Court, or to the Chief Judge, the senior Judge, a Judge or an officer of the former Supreme Court, shall be read as, or as including, a reference to the Court, or to the Chief Justice, the senior Judge, a Judge or an officer of the Court, as the case may be.

References to former Supreme Court, &c.

(2) A reference, in a law that was in force in the Territory before the commencement of this Act, to the repealed Act or to the *Supreme Court Ordinance 1911*, or that Ordinance as amended, shall be read as including a reference to this Act.

(3) A reference, in a law that was in force in the Territory before the commencement of this Act, to rules of the Supreme Court, or to rules made under a provision of—

(a) the repealed Act; or

(b) the *Supreme Court Ordinance 1911*, or that Ordinance as amended,

shall be read as including a reference to the Rules of Court made under this Act.

7.(1) Upon the commencement of this Act, the person who, immediately before the commencement of this Act, held office as the Chief Judge of the former Supreme Court—

Judges of former Supreme Court

(a) holds office as a Judge of the Court as though he had been appointed under this Act to be a Judge of the Court;

(b) is the senior Judge of the Court; and

(c) shall not be required to take an oath or affirmation before his appointment as Chief Justice, but shall be required to take an oath or affirmation upon his appointment as Chief Justice.

(2) Upon the commencement of this Act, each person who, immediately before the commencement of this Act, held office as a Judge of the former Supreme Court, but was not the Chief Judge or an additional Judge of the former Supreme Court—

- (a) holds office as a Judge of the Court as though he had been appointed under this Act to be a Judge of the Court;
- (b) has the seniority, as between himself and the other Judges who hold office by virtue of this sub-section, that he had immediately before the commencement of this Act; and
- (c) shall, before proceeding to discharge the duties of his office under this Act, take before the Administrator, or before a person appointed by the Attorney-General in that behalf, an oath or affirmation in accordance with one of the forms in the Schedule.

Officers of former
Supreme Court

8.(1) A person who was, or was acting as, an officer of the former Supreme Court immediately before the commencement of this Act continues in the equivalent office or to act, as the case may be, after the commencement of this Act as if he were appointed, or appointed to act, under, or after the commencement of, this Act.

(2) A person who continues in an office by virtue of sub-section (1) shall not be required to take an oath upon the commencement of this Act.

Interpretation

9. In this Act, unless the contrary intention appears—

“acting Judge” means a person appointed under this Act to act as a Judge;

“additional Judge” means a person appointed under this Act to be an additional Judge;

“affidavit” includes, in relation to a person who conscientiously objects to taking an oath, a solemn affirmation or declaration in writing;

“Chief Justice” means the Chief Justice of the Court, and includes a Judge for the time being performing the duties and exercising the powers of the Chief Justice;

“Court” or “Supreme Court” means the Supreme Court of the Northern Territory of Australia established by this Act;

“Court of Appeal” means the Court of Appeal of the Northern Territory of Australia within the meaning of section 51(2);

“defendant” includes a person against whom relief is sought in a proceeding or who is required to attend as a party to a proceeding;

“Deputy Master” means a Deputy Master appointed under this Act;

“former Supreme Court” means the Supreme Court of the Northern Territory of Australia as established by law immediately before the commencement of this Act;

“Full Court” means the Court, not being the Court of Appeal, constituted by not less than 3 Judges;

“Judge” means a Judge of the Court, and includes a person who

is—

- (a) the Chief Justice;
- (b) an additional Judge; or
- (c) an acting Judge;

“judgment” includes a decree, order, declaration, determination, finding, conviction or sentence, and a refusal to make a decree, order, declaration, determination or finding, whether final or otherwise;

“Judicature Act” means The Supreme Court of Judicature Act, 1873 of the United Kingdom;

“Master” means the Master of the Court;

“plaintiff” includes a person seeking relief against another person by any form of proceeding in the Court;

“practice and procedure” includes matters relating to costs, the method of pleading, the attendance of witnesses, the custody or bail of accused or convicted persons and the enforcement and execution of judgments;

“proceeding” means a proceeding in the Court whether between parties or not, and includes—

- (a) a cause, action, suit or matter;
- (b) an incidental proceeding in the course of, or in connection with, a cause, action, suit or matter;
- (c) a criminal proceeding, where the context so permits; and
- (d) an appeal;

“repealed Act” means the *Northern Territory Supreme Court Act* 1961 of the Commonwealth, or that Act as amended at any time;

“Rules” means the Rules of Court made under this Act;

“Seal” means the Seal of the Court;

“Sheriff” means the Sheriff of the Territory.

PART II—CONSTITUTION AND JURISDICTION OF THE COURT

Division 1—Constitution

10. There shall be a Court which, subject to section 51(2), shall be known as the Supreme Court of the Northern Territory of Australia. Establishment

11.(1) The Court consists of the Judges. Constitution

(2) The Court shall be constituted by a Judge or Judges sitting and exercising the jurisdiction of the Court.

(3) The Court constituted by a Judge or Judges may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another Judge or other Judges is at the same time sitting and exercising the jurisdiction of the Court.

Superior court of record

12. The Court shall be the superior court of record of the Territory.

Principal seat, &c.

13.(1) The principal seat of the Court shall be at Darwin.

(2) The Court shall have power to sit and act at any time and at any place the Chief Justice directs, for the transaction of any part of the business of the Court, or for the discharge of any duty which by any law in force in the Territory is required to be discharged.

(3) The jurisdiction of the Court exercisable in Chambers may be so exercised at any place at any time.

Division 2—Jurisdiction

Jurisdiction

14.(1) In addition to the jurisdiction conferred on it elsewhere by this Act, the Court—

(a) has jurisdiction—

(i) in a proceeding between the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, and the Territory, or a person suing or being sued on behalf of the Territory;

(ii) in a proceeding between the Territory, or a person suing or being sued on behalf of the Territory, and any other person, or a person suing or being sued on behalf of that other person; and

(iii) in a proceeding between the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, and any other person, or a person suing or being sued on behalf of that other person;

(b) has, subject to this Act and to any other law in force in the Territory, in relation to the Territory, the same original jurisdiction, both civil and criminal, as the Supreme Court of South Australia had in relation to the State of South Australia immediately before 1 January 1911;

(c) has such jurisdiction, whether civil or criminal, as was, immediately before the commencement of this Act, vested in or conferred on the former Supreme Court or is from time to time vested in or conferred on the Court by any law in force in the Territory (including a law passed or made before the commencement of this Act, as affected by section 6);

(d) has jurisdiction in a proceeding in which a writ of mandamus or prohibition or an injunction or other relief is sought against an officer of the Commonwealth or of the Territory, being a proceeding arising in, or under a law in force in, the Territory; and

- (e) has jurisdiction, with such exceptions and subject to such conditions as are provided by a law in force in the Territory, to hear and determine appeals from all judgments of inferior courts in the Territory given or pronounced after the commencement of this Act.

(2) The jurisdiction of the Court referred to in sub-section (1) is in addition to the jurisdiction that the Court has under any Imperial Act.

15. The jurisdiction of the Court, other than its appellate jurisdiction, is exercisable—

Exercise of jurisdiction

- (a) by the Full Court;
- (b) where it is not expressly provided that the jurisdiction of the Court shall be exercised by the Full Court, by one Judge sitting in Court;
- (c) as provided by section 16, by a Judge sitting in Chambers; or
- (d) as provided by Division 4, by the Master or a referee.

16.(1) The jurisdiction of the Court, other than its appellate jurisdiction, may be exercised by a Judge sitting in Chambers—

Chambers

- (a) as provided by this Act, by the Rules or by any other law in force in the Territory; and
- (b) in all matters of practice and procedure.

(2) A judge may order a proceeding in Chambers to be adjourned into Court and heard in open court.

17. The Court may order the exclusion of the public or of persons specified by the Court from a sitting or a part of a sitting of the Court.

Open Court

18.(1) The Court may, in relation to any matter in which it has jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.

Declaration of right

(2) A proceeding is not open to objection on the ground that a declaratory order only is sought.

19. The Court shall, in every proceeding before it, grant, either absolutely or on such terms and conditions as it thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him in the proceeding, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters avoided.

Determination of matter completely and finally

20. The Court has power, in relation to matters in which it has jurisdiction, to make orders, including interlocutory orders, in such terms as it thinks fit and to issue, or direct the issue of, writs in such terms as it thinks fit.

Orders and writs

53. A party to a proceeding may not appeal under section 51(1) from an interlocutory judgment except by leave of the Court of Appeal constituted by not less than 3 Judges. Appeal from interlocutory judgment

54. The Court of Appeal shall have regard to the evidence given in the proceedings out of which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence, which may be taken in affidavit, by oral examination before the Court of Appeal or a Judge or otherwise as the Court of Appeal directs. Evidence on appeal

55.(1) Subject to any law in force in the Territory, the Court of Appeal— Form of judgment on appeal

- (a) may exercise every power, jurisdiction and authority of the Court, whether at law or in equity or under any law in force in the Territory; and
- (b) shall give such judgment as, in all the circumstances, it thinks fit.

(2) Without limiting the effect of sub-section (1), the Court of Appeal—

- (a) may affirm, reverse or vary the judgment appealed from, in whole or in part;
- (b) may set aside the judgment appealed from, in whole or in part, and substitute its own judgment or remit the proceeding to the Court constituted by the Judge who gave that judgment for further hearing and determination, subject to such directions as the Court of Appeal thinks fit;
- (c) may set aside a verdict or finding of a jury in a civil proceeding, and enter a judgment notwithstanding any such verdict or finding;
- (d) may set aside the verdict and judgment in a trial on indictment and order a verdict of not guilty or other appropriate verdict to be entered;
- (e) may grant a new trial in any case in which there has been a trial, either with or without a jury, on any ground upon which it is appropriate to grant a new trial; and
- (f) may award execution from the Court or remit the proceeding to another court for the execution of the judgment of the Court of Appeal.

(3) It is the duty of a court to which a proceeding is remitted in accordance with sub-section (1)(f) to execute the judgment of the Court of Appeal in the same manner as if it were its own judgment.

(4) The Court of Appeal shall comply with sub-section (1) notwithstanding that the notice of appeal asks that part only of the judgment may be reversed or varied, and it may give judgment in favour of all or any of the respondents or parties, including respondents or parties who have not appealed from or complained of the judgment.

(5) In a criminal proceeding the Court of Appeal may, notwithstanding that it is of the opinion that the question or questions raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(6) An interlocutory judgment from which there has been no appeal does not operate to prevent the Court of Appeal from giving such decision upon an appeal as it thinks just.

(7) The powers of the Court of Appeal under sub-section (1) in an appeal (whether by the Crown or by the defendant) against a sentence include the power to increase or decrease the sentence or substitute a different sentence.

(8) No appeal shall lie to the Court from an acquittal by a jury in a proceeding.

New trial

56.(1) In an appeal in which the Court of Appeal grants a new trial, the Court of Appeal may impose such conditions on a party, and may direct such admissions to be made by a party, for the purpose of the new trial as it thinks just.

(2) Where the Court of Appeal grants a new trial, the Court of Appeal—

- (a) may grant it, either generally or on particular issues only, as it thinks just; and
- (b) may at any time order that evidence of a witness examined at the former trial be used in the new trial in the manner provided in the order.

Stay of proceedings

57.(1) Where an appeal to the Court under section 51(1) has been instituted, the Court of Appeal or the Court may—

- (a) order, on such conditions, if any, as it thinks fit, a stay of the whole or any part of a proceeding under the judgment appealed from; and
- (b) by order, on such conditions, if any, as it thinks fit, suspend the operation of a judgment to which the appeal, in whole or in part, relates.

(2) Sub-section (1) does not affect the operation of any provision made by or under any other law in force in the Territory or by the Rules for or in relation to the stay of a proceeding.

(3) Except as expressly provided by this section or by the Rules or any other law in force in the Territory, the institution of an appeal does not operate as a stay of execution.

Senior Judge presides

58.(1) At a sitting of the Court of Appeal at which the Chief Justice is present, he shall preside.

(2) In the absence of the Chief Justice from a sitting of the Court of Appeal, the senior Judge present shall preside, unless the Chief Justice directs otherwise.