Inder–Smith & Ors v Tudor–Stack [2004] NTSC 48

PARTIES:	INDER–SMITH, ROBERT MEYERHOFF, GARY HIGHWAY, STUART LAMBE, MICHAEL MEYERHOFF, GARY v TUDOR–STACK, PAUL
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NOS:	JA 100/03 (20207624) JA 101/03 (20207623) JA 102/03 (20207648) JA 104/03 (20207640) JA 105/03 (20207623)
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JUDGMENT OF:	ANGEL J

CATCHWORDS:

CRIMINAL LAW – PARTICULAR OFFENCES

Offence against Government – whether appellants intentionally disturbed the Legislative Assembly – challenge to jurisdiction of the Court – relevance of implied freedom of communication – whether prosecution politically motivated – whether magistrate biased - relevance of appellants' motivation – whether provocation

Bill of Rights 1688 (UK), article 9
Criminal Code, s 31, s 34 and s 61(a)
Geneva Conventions Act 1957 (Cth)
Legislative Assembly (Powers and Privileges) Act, s 6
Northern Territory (Self-Government) Act 1978 (Cth), s 12

Phillips v Bahnert [1998] NTSC 68, followed
Lange v Australian Broadcasting Corporation (1997) 189 CLR 520, followed

Dietrich v The Queen (1992) 177 CLR 292, distinguished

REPRESENTATION:

Counsel:

Appellants:	Self–represented
Respondent:	Mr Michael Carey, instructed by Mr Peter Thomas

Solicitors:

Appellants:	Self–represented
Respondent:	Office of the Director of Public Prosecutions

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Inder–Smith & Ors v Tudor–Stack [2004] NTSC 48
Nos. JA 100/03 (20207624)
JA 101/03 (20207623)
JA 102/03 (20207648)
JA 104/03 (20207640)
JA 105/03 (20207623)

BETWEEN:

ROBERT INDER–SMITH
GARY MEYERHOFF
STUART HIGHWAY
MICHAEL LAMBE
GARY MEYERHOFF
Appellants

AND:

PAUL TUDOR–STACK
Respondent

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 17 September 2004)

[1] On 22 May 2003 each of the four appellants was found guilty of intentionally disturbing the Legislative Assembly while it was in session on Tuesday 14 May 2002, contrary to s 61(a) Criminal Code NT. The hearing in the Darwin Court of Summary Jurisdiction commenced as joint committal proceedings and concluded with the conviction and sentencing of each appellant. Each appellant appeals against his conviction and the appellant

Meyerhoff, in addition, appeals against an order of the Court setting aside the issue of a subpoena against the Police Commissioner.

[2] The appeals arise from an incident which occurred in the Legislative Assembly of the Northern Territory on 14 May 2002 while it was in session. Nine persons, including each appellant, were charged in relation to the incident. With respect to one such person proceedings appear to be outstanding. Four persons pleaded guilty. Each present appellant pleaded not guilty. Each appellant also appeals against his sentence. The appeals against sentence are deferred, and I have not addressed the grounds of appeal in so far as they relate to sentence. In the event the appeals against conviction are dismissed the appeals against sentence will be heard with the appeal against sentence of a co–defendant who pleaded guilty.

[3] It was not disputed by any of the appellants either before the Magistrate or on appeal in this Court that they were amongst those who entered the Assembly on the day in question and that the business of the Assembly was suspended as a result. The learned Magistrate found that the entry resulted in the business of the Assembly being suspended for a period, a finding incontrovertible on the evidence. He found each intended to disturb the sitting of the Legislative Assembly.

[4] The learned Magistrate found the charge proved against each of the four appellants. The appellants Meyerhoff and Inder–Smith were each sentenced to 21 months imprisonment from 5 June 2003 suspended after serving five

months and with a two year operative term for the purposes of the Sentencing Act NT s 40(6). The appellant Highway was sentenced to 18 months imprisonment from 5 June 2003 suspended after serving five months and with a two year operative period for the purposes of s 40(6) Sentencing Act NT. The appellant Lambe was sentenced to 16 months imprisonment from 5 June 2003 suspended after serving four months with a two year operative term.

[5] The appellant Meyerhoff was instrumental in founding an association called "Network against Prohibition" which is known by its acronym NAP. The appellant Lambe has, and has had for a number of years, close ties with Aboriginal people on the Cox Peninsula and apart from now being associated with NAP, was an initiator of a group of people calling themselves "People against Racism in Aboriginal Homelands", known by its acronym PARIAH. The appellants Inder–Smith and Highway are also associated with NAP which was founded in 2002 and comprises a group of people who believe that the majority of drug related crime is because certain drugs are illegal and because of the stigma associated with drug use. They believe all drugs should be decriminalised and that there should be controlled availability of drugs, including opiates. The appellants' strongly held views on drugs, whilst unacceptable to those against any relaxation of current drug laws have strong support elsewhere, see generally the Museum Victoria lecture of Professor David Pennington AC of 17 May 1999 – "An

Overview of Drug Use and Drug Policy in Australia". (See Lecture Series at http://www.mov.vic.gov.au/lectures)

[6] On 14 May 2002 the Legislative Assembly was in session, on the eve of the introduction of certain amendments to the Misuse of Drugs Act NT. Those amendments were strongly opposed by members of NAP, including the four appellants. The four appellants entertain strong views concerning drug use and vehemently opposed the Bill to amend the Misuse of Drugs Act NT to be debated in the Legislative Assembly. It was their deeply held views on this issue, amongst other things, that both motivated their actions on 14 May 2002 and constituted a central theme running through their grounds of appeal.

[7] There are certain common grounds of appeal, namely:

1. That the Court of Summary Jurisdiction had no jurisdiction to try the case;

2. That the appellants were legally unrepresented and were denied various applications for adjournment;

3. That the prosecution was politically motivated and the trial politicised and that the appellants had been subjected to selective prosecution;

4. That the learned Magistrate was biased;

5. That the Prosecutor was biased and ought to have desisted from acting in the matter;

6. That the appellants' actions were excused on account of provocation under s 34(3) Criminal Code NT;

7. That the appellants' actions were protected under the Geneva Conventions;

8. That the appellants' actions constituted part of or were incidental to the proceedings of the Legislative Assembly and were therefore immune from judicial intervention and protected by the Bill of Rights 1688 (UK) in virtue of the Legislative Assembly (Powers and Privileges) Act NT s6.

[8] Specific complaints of the appellants were:

– That the appellants had not had enough time to prepare their case before the Magistrate and ought to have been granted an adjournment;

– that they had received an unfair trial on account, inter alia, of a failure to secure adjournments;

– that the Legislative Assembly video of what occurred within the Legislative Assembly (Exhibit P 2) had been wrongfully edited so as to exclude certain assaults upon the appellants that were said to have occurred;

– that the appellants had exhausted all normal avenues of publicising their stand with respect to the drug laws, and having been ignored by the media and harassed by Police, their entry into Parliament was the only way their voice could be heard;

– that both the Magistrate and prosecutor were biased;

– that the proceedings having commenced as a committal the appellants had not been fully advised of their rights to a trial by jury;

– that they had not freely elected to proceed in a summary fashion following the closing of the Crown case;

– that the learned Magistrate failed to advise them their rights under s 126 Justices Act NT to have witnesses recalled for further cross–examination;

– that the motive of the appellants throughout was altruistic;

– that they should have been excused for their actions under s 31 Criminal Code NT; they were unaware of the offence of which they were convicted and did not intend to break the law;

– that the prosecutor having given evidence against Highway's interest in a previous case before the same Magistrate and the Magistrate having made findings against the credit of

Highway, the Magistrate ought to have disqualified himself from hearing the matter;

– that the prosecution of the appellants was selective and politically motivated;

– that certain public comments made by the Attorney–General who gave evidence at the trial were grounds for a retrial;

– that the Legislative Assembly video of the proceedings in the chamber was improperly withheld from the appellants prior to and at the start of the trial;

– that a hostile media campaign rendered the trial unfair;

– that the appellant Meyerhoff was unable properly to prepare for trial on account of restrictive bail conditions pending the hearing which prevented him from discussing the matter with co–accused including people with whom he shared a house;

– that the appellant Meyerhoff was unable to secure for himself a fair trial due to his medical condition.

[9] The grounds of appeal against conviction are not uniform in respect of all the appellants. In the case of Lambe, his amended notice of appeal identifies 124 numbered grounds of appeal. In their amended notices of appeal, Meyerhoff, Highway and Inder-Smith specify 11 grounds of appeal which I will call the common grounds, although Highway adds a 12th ground

of appeal. Many of the grounds identified, particularly in Lambe's amended notice of appeal, are repetitive.

[10] On 10 June 2004, the appellants gave notice to the Attorneys-General of the Commonwealth, the States and the Territories pursuant to the Judiciary Act 1903 (Cth) s 78B of a constitutional matter that might arise under the Constitution or involve its interpretation, namely, whether and to what extent the Criminal Code NT s 61 infringes what was said to be the implied constitutional freedom of speech and access to government (see also Lambe's amended grounds of appeal regarding jurisdiction). The notice also related to the requirement of the separation of powers in the Northern Territory which does not concern the Commonwealth Constitution, and the appellants' view that the Constitution has not been being correctly interpreted which is not a matter for adjudication by this Court. No response was received from any of the Attorneys-General.

Appeals against conviction

[11] I turn to deal with the common grounds of the appellants Meyerhoff, Inder-Smith and Highway.

[12] Ground 1 of the common grounds of appeal challenges the jurisdiction of the Court of Summary Jurisdiction to try the case. It is clear that the jurisdiction of the Court of Summary Jurisdiction to hear the matter arises under the Justices Act and it is a prosecution pursuant to the Criminal Code NT s 61; the Legislative Assembly has enacted the Criminal Code NT s 61

as a law of the Northern Territory to be applied by the courts. As against this, it was contended that in enacting the Criminal Code NT s 61 the Legislative Assembly was thereby acting ultra vires in infringing the doctrine of separation of powers since matters involving the Legislative Assembly were within the exclusive jurisdiction of the Legislative Assembly by reason of that doctrine.

[13] This argument misunderstands the application of that doctrine. It is without merit. The Northern Territory (Self-Government) Act 1978 (Cth) s 12 provides for the making of laws declaring the powers, privileges and immunities of the Legislative Assembly with reference to those of the federal House of Representatives, and providing for the manner in which those powers, privileges and immunities so declared may be exercised or upheld. There can be no doubt that it is within the legislative competence of the federal House of Representatives, and indeed the Legislative Assembly, to enact legislation creating as an offence at law a matter which might equally be adjudged to be a breach of privilege or a contempt (see Pettifer (ed.), House of Representatives Practice (1981) at 663; Limon and McKay (eds), Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (22nd ed, 1997) at 139; Odgers' Australian Senate Practice (9th ed, 1999) at 61-2; McGee, Parliamentary Practice in New Zealand (1994) at 473; Enid Campbell, Parliamentary Privilege, 2003 at 199). Similar provision is to be found in the WA and Queensland Criminal Codes, s 56.

[14] The validity of the Criminal Code NT s 61 is also challenged as violating the appellants' constitutional right to freedom of speech. Ground 8 of the common grounds of appeal is that the Criminal Code NT s 61 breaches the appellants' implied freedom of speech and access to government as implied in the Commonwealth Constitution.

[15] This argument fails. In Lange v Australian Broadcasting Corporation (1997) 189 CLR 520 at 567-568, the High Court stated the test for determining whether a law infringes this constitutional freedom as follows:

> "When a law of a State or federal Parliament or a Territory legislature is alleged to infringe the requirement of freedom of communication …, two questions must be answered before the validity of the law can be determined. First, does the law effectively burden freedom of communication about government or political matters either in its terms, operation or effect? Second, if the law effectively burdens that freedom, is the law reasonably appropriate and adapted to serve a legitimate end the fulfilment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government …. If the first question is answered 'yes' and the second is answered 'no', the law is invalid." (footnotes omitted)

[16] The Criminal Code NT s 61 does not effectively burden freedom of communication about government or political matters either in its terms, operation or effect. In any event, to any extent that it does, it is reasonably appropriate and adapted to serve a legitimate end the fulfilment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government, namely the undisturbed conduct of parliamentary proceedings.

[17] The common grounds of appeal against conviction also include a complaint that the appellants were legally unrepresented before the learned Magistrate (ground 2). I do not consider that the principles established in Dietrich v The Queen (1992) 177 CLR 292 have any application here. The appellants stated before me that they could not afford legal representation and legal aid would only have been provided if they had pleaded guilty. However, none of the appellants at the outset of the hearing on 31 October 2002 sought an adjournment or indicated he wanted to obtain legal advice or legal representation. Indeed, prior to sentencing each expressly indicated to the learned Magistrate on 22 May 2003 that they did not wish to have a lawyer for the purpose of making submissions in relation to sentence. It is not uncommon for defendants before the Court of Summary Jurisdiction to exercise their right to represent themselves. That is a matter for them and if in hindsight that does not seem to have been a wise decision, it does not support a claim that there was thereby any unfairness in the fact that they were not legally represented (see Phillips v Bahnert [1998] NTSC 68).

[18] This ground is supported with reference to what was said to be a hostile media campaign likely to affect their receiving a fair jury trial and the appellants' emotional and physical exhaustion from dealing with a government and police campaign against them. No evidence was adduced before the learned Magistrate of these matters.

[19] Alleged political and judicial bias was raised by each appellant.

[20] The third and 11th grounds of the common grounds of appeal allege a politicisation of the trial and bias on the part of the learned Magistrate. A careful consideration of the submissions on this ground does not support any contention of bias on the learned Magistrate's part. The common grounds refer to various aspects of the proceedings in support of this contention. In particular it is argued that evidence of the bias is to be seen in various of the learned Magistrate's rulings, for example, in that he "ignored any defences put up by the defendants". To the contrary, it is clear from the transcript that the learned Magistrate considered these matters. It is not evidence of bias that having considered them he did not find the proposed defences to be made out. Other aspects of the submissions relate to the politicisation of the trial. There is no demonstrated basis for any of these submissions.

[21] The fourth common ground of appeal is that the High Court has incorrectly interpreted the Commonwealth Constitution "in the light of Mabo and other changes in Australia's social and legal framework since its inception". Any challenge the appellants seek to make in relation to any aspect of the interpretation by the High Court of the Commonwealth Constitution must be made to that Court.

[22] The appellants assert that the Legislative Assembly's rights are diminished in "a racist and corrupt state" (ground 5). There is no legal or evidentiary basis for this submission. It is in any event, irrelevant. The role, indeed, duty of this Court is simply to apply the laws enacted by the Legislative Assembly.

[23] The appellants assert there is evidence of ‘selective prosecution’ on political grounds (ground 7).

There is no evidentiary basis for this submission. Indeed, as noted by the learned Magistrate, this charge concerns “the most serious disturbance of the Legislative Assembly that has ever happened in the history of the Territory”.

[24] Ground 10 of the common grounds of appeal is that the appellants’ actions are protected under the Geneva Conventions, treating the “War on Drugs” as a war for the purposes of the Conventions.

The Conventions and their associated Protocols are:

* Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949

* Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949

* Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949

* Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). Geneva, 8 June 1977

* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

[25] The appellants did not specify which of the Conventions they specifically considered covered the their situation or in what way they were available to assist them. Having regard to the common provisions of the various Conventions, as contained in the Schedules to the Geneva Conventions Act 1957 (Cth), the Conventions apply to declared war, to any international armed conflict and limited internal armed conflict. It is not apparent to me that the Conventions have any application to the circumstances of this case.

[26] A related ground, ground 9 of the common grounds of appeal, is that the policy of the Misuse of Drugs Act NT breaches international law. The appellants have not identified what international law they claim the legislation breaches and I am not satisfied of the existence of any such breach.

[27] The appellant Highway adds a 12th ground of appeal, namely that his offence was the result of inadequate security at the Legislative Assembly in that the doors to the Chamber had been left unlocked. In so far as this submission suggests that the element of intent was not satisfied on the evidence, the

matter is addressed by the learned Magistrate in his findings that all of the appellants were associated with the Network Against Prohibition ('NAP'), they were at the Parliament because debate was to be had upon a Bill to amend the Misuse of Drugs Act NT of which they strongly disapproved and while he accepted that they had not expected to have been able to get into the Assembly, he found that Highway "almost explicitly" indicated it had been their hope. His Worship was satisfied as to intent and there is no basis in the evidence to disturb that finding. Nor does this ground demonstrate any matter of authorization, justification or excuse under Part II ("Criminal Responsibility") under the Criminal Code NT.

[28] In particular the appellants' actions are not excusable in virtue of s 34 Criminal Code NT. The appellants claim to have been provoked into doing what they did. The appellants (although in Lambe's case based on a rather different set of concerns, which he elaborates in his grounds of appeal particularly at grounds 87 – 118) pointed to what they perceived to be police persecution and harassment, in Lambe's case dating back a number of years. They elaborated before me an extensive collection of grievances, adverted to by the learned Magistrate in his reasons. However, even if accepting the basis of their claims, no ordinary person similarly circumstanced to the appellants would have acted in the same or a similar way, that is, entered the Legislative Assembly chamber without invitation waving placards and demonstrating in such a fashion as to bring Parliamentary proceedings to a halt.

[29] Many of the appellant Lambe's grounds of appeal repeat grounds already addressed above in the common grounds of appeal.

[30] Ground 1 of Lambe's grounds of appeal is that his communications and speech within the Legislative Assembly constituted part of the proceedings and is therefore immune from judicial intervention and protected by the Bill of Rights 1688 (UK). The protections of article 9 of the Bill of Rights 1688 (UK) are specifically applied in relation to the Assembly by the Legislative Assembly (Powers and Privileges) Act NT s 6. However, these provisions have no application in this case. The appellants' actions in the Assembly did not constitute part of its proceedings. The appellants were strangers to the House. Indeed, the business of the Assembly was suspended for a period in consequence of the appellants' entry. In like manner, ground 4 of Lambe's grounds of appeal raises the application of the Bill of Rights 1688 (UK) in characterising him as a "guest" of the Assembly, with the rights therefore enjoyed by members. There is simply no basis for this.

[31] Grounds 2 – 6, 8 – 13, 16, and 20 – 27 of Lambe's grounds of appeal broadly reflect ground 1 of the common grounds of appeal discussed above. For the reasons given there, there is no merit in these grounds. Grounds 14, 15 and 17 -19 appear to extend ground 1 of the common grounds of appeal, alleging that the Criminal Code NT s 61 is void on other grounds, vagueness, uncertainty and imprecision (ground 14), inordinately harsh and grossly disproportionate as to penalty (ground 16), grossly and manifestly oppressive (ground 17), grossly and oppressively excessive (ground 18) and

defining no offence or criminal conduct (ground 19). As discussed in relation to the challenge to the validity of s 61 in ground 1 of the common grounds of appeal, that provision is clearly within the legislative power of the Assembly. There is no substance in any of these grounds.

[32] Grounds 7, 12 and 77 of Lambe's grounds of appeal reflect ground 8 of the common grounds of appeal and fail for the reasons there given. This is also true of grounds 28 – 29, 34 – 40, and 53 – 75 which broadly appear to reflect grounds 3 and 11 of the common grounds of appeal. Grounds 30 – 33 reflect ground 2 of the common grounds and I also reiterate my findings in relation to that ground.

[33] Grounds 41 – 52 relate to Ms Emma Corro. Ms Corro has not appealed her conviction for this offence and these grounds do not appear to be otherwise relevant to Lambe's appeal.

[34] Ground 76 reflects ground 4 of the common grounds and I reiterate my findings in relation to that ground. Similarly, with respect to grounds 78 – 85 which appear to amplify ground 5 of the common grounds, and grounds 119 – 124 which appear to reflect ground 7 of the common grounds.

Appeal against witness ruling

[35] Meyerhoff also appeals against a ruling by the learned Magistrate during the hearing excusing the Commissioner of Police, Paul White, from appearing as a witness after being served with a summons issued at Meyerhoff's request.

The error of law alleged is the learned Magistrate's ignoring the appellants' submissions. This allegation also formed part of the allegation of bias against the learned Magistrate in the common grounds of appeal. I have considered the submissions of the appellants before the learned Magistrate on this question and the learned Magistrate's ruling and reasons therefor.

[36] It is clear that the learned Magistrate did not ignore the submissions made. Indeed, his summary of the objectives of those submissions accurately represents their intent as I understand them to have been:

> "As best I can see it Mr Meyerhoff would be hoping that the Police Commissioner would disclose a police policy not to tolerate the demonstrations that the groups put together, to arrest at the first opportunity or even before that to arrest for no reason at all those taking part in the demonstration, to charge lavishly and on insufficient evidence any of those involved in the demonstration with a view first to making their lives miserable and secondly to embarrassing them in the defence of one charge by having so many other charges pending and to disclose a deliberate failure to follow-up and investigate the complaints laid by the demonstrators against police.
>
> Next Mr Meyerhoff would hope that the Police Commissioner would disclose that these policies of ongoing harassment by police action and by police prosecution and by police inaction in relation to defendant's complaints were a matter of government policy discussed between the Commissioner and the Minister of Police."

Having considered the submissions made, the learned Magistrate simply did not consider that they precluded his ruling. There is no error of law demonstrated in that ruling and no basis for this Court to interfere with it.

[37] I turn to some of the specific complaints of the appellants.

[38] A reading of the Transcript of the Proceedings in the court below fails to disclose that the appellants received an unfair trial on account of their failure to secure adjournments or on any other account. Nor was there any evidence of bias either on the part of the Magistrate or the prosecutor. Viewing the video of what occurred within the Legislative Assembly there is nothing to indicate deliberate editing to exclude relevant evidence. If assaults upon the appellants occurred out of range of the cameras that has nothing to do with the present offending. All that means is that other offences took place quite unrelated and irrelevant to the present proceedings. Whilst the Magistrate might have said more concerning the appellants' choice of proceeding summarily rather than to a trial by a jury he advised them of their choices and they made it. That it was a considered choice is demonstrated by the appellants' stated apprehension that a jury might be swayed by what the appellants asserted was a long standing hostile media campaign.

[39] The appellants had no defence in virtue of s 31 Criminal Code NT; if they were unaware of the existence of the offence of which they were convicted, that was no excuse. It was the intention to disturb as found by the learned Magistrate, a finding open on the evidence, that is, to commit the acts constituting the offence that was relevant, not any intention to break the law.

[40] The learned Magistrate's participation in an earlier case against the appellant Highway and the prosecutor having been preferred as a witness in

the case were not grounds for either the Magistrate or the prosecutor to disqualify themselves from participating in the present case even though it may have been preferable for another magistrate to hear the matter. The public comments made by the Attorney–General prior to giving evidence at the trial were not grounds for a retrial. The Attorney–General made some comments adverse to the appellant Inder–Smith to the effect that the public was sick of Inder–Smith and his attitude to drugs. Whatever the appropriateness of such comments pending trial, there is nothing in the appellants' complaints in this regard.

[41] The appellants' handling of the trial evident from the transcript does not support the appellants' submissions that they were not properly prepared for trial. I would add that there is nothing in the appellants' complaint that they had delayed access to the video of Parliamentary proceedings. Whilst they were not given a copy of it until some days into the hearing, they were able to view it and demonstrably had knowledge of it prior to the proceedings and used that knowledge during the proceedings. A copy of the video was only given to the appellants once they had agreed not to republish it.

[42] Many of the appellants' submissions were matters relating to penalty rather than conviction and many of their assertions had no evidentiary foundation. The only other matter to which I specifically wish to refer is that the prosecution and trial were politicised. As the learned Magistrate said the offending itself was of a political character and a prosecution therefore was in that sense necessarily political. The appellant Meyerhoff correctly

pointed out that in our political system there is an assumption of freedom and that the law makes exceptions to what one is otherwise free to do. Section 61 Criminal Code NT is one such exception to freedom of speech. As Lord Goff of Chieveley said in *A–G v Guardian Newspapers (No 2)* [1990] 1 AC 109 at 283:

> " … we in this country (where everybody is free to do anything, subject only to the provisions of the law) proceed … upon an assumption of freedom of speech, and turn to our law to discover the established exceptions to it."

With respect to the public interest in freedom of discussion reference might also be made to the speech of Lord Simon of Glaisdale in *A–G v Times Newspapers* [1974] AC 273 at 320:

> "The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves."

Particularly where prosecutions are political the Court will always treat individual freedom tenderly and beware of selective law enforcement; compare *Watson v Trenerry* (1998) 122 NTR 1 at 8; *Wright v McQualter* (1970) 17 FLR 305 at 319–320. In the present case the offending is undoubtedly of a political character. Compare *In re Castioni* [1891] 1 QB 149. The prosecution of the present offences, given the nature of the offending is understandable and can not be said to be selective or partial or animated by other than proper motives.

[43] Given the uncontested evidence that the appellants entered the Legislative chamber without permission and as strangers and disturbed the House to the point where proceedings were necessarily suspended and intended to disturb and interrupt the ordinary proceedings there, plainly no miscarriage of justice occurred when each appellant was convicted of an offence contrary to s 61 Criminal Code NT.

[44] Each appeal against conviction is dismissed.

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