Lange v Lange [2006] NTSC 74

PARTIES:	ROBERT VICTOR LANGE
	v
	DEBRA GAYE LANGE
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	No 36 of 2003 (20315428)
DELIVERED:	3 October 2006
HEARING DATES:	14 September 2006
JUDGMENT OF:	MILDREN J

CATCHWORDS:

DAMAGES – claim for personal injuries – motor vehicle accident – whether plaintiff resident of the Northern Territory – whether plaintiff's employment agreement required his services in the Territory for at least three months – contract terminable by either party on two weeks' notice

Legislation:
Interpretation Act, s 62A
Motor Accidents (Compensation) Act, s 4, s 4(1)(a)(ii), s 5(1)(a), s 6
Supreme Court Rules, O 45.04

Bibliography:
Pearce and Geddes, *Statutory Interpretation in Australia*, 6th ed, LexisNexis Butterworths, Sydney, 2006
The Macquarie Dictionary, 3rd ed, The Macquarie Library Pty Ltd, Sydney, 1999
The Shorter Oxford Dictionary, 3rd ed, Oxford University Press, Oxford, 1973

Citations:

Applied:
Bropho v The State of Western Australia & Anor (1990) 171 CLR 1
CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384
Darwin City Council v McDonnell and Ors (1998) 8 NTLR 106
Project Blue Sky Inc & Ors v Australian Broadcasting Authority (1998) 194 CLR 355
R v Young (1999) 46 NSWLR 681; (1999) 107 A Crim R 1
The State of New South Wales v Taylor (2001) 204 CLR 461
Thompson v Goold & Co [1910] AC 409
Wentworth Securities Ltd & Anor v Jones [1980] AC 74

Followed:
Andersen v Umbakumba Community Council (1994) 126 ALR 121
BP Australia Ltd v Brown and Ors (2003) 58 NSWLR 322
Buric v Transfield PBM Pty Ltd (1992) 112 FLR 189
R (on the application of Burkett and Anor) v Hammersmith and Fulham London Borough Council [2002] 3 All ER 97

Referred to:
G C & E Nuthall (1917) Ltd v Entertainments & General Investment Corporation Ltd and Ors [1947] 2 All ER 384
Stock v Orcsik [1977] VR 382
Marshall v Watson (1972) 124 CLR 640

Distinguished:
Hansen v Northern Land Council (unreported, (1999) NTJ 1389; [1999] NTSC 69; BC9903841)

REPRESENTATION:

Counsel:

Plaintiff:	J Reeves QC
Defendant:	P Barr QC

Solicitors:

Plaintiff:	De Silva Hebron
Defendant:	Cridlands

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Lange v Lange [2006] NTSC 74
No. 36 of 2003 (20315428)

BETWEEN:

LANGE, Robert Victor
Plaintiff

AND:

LANGE, Debra Gaye
Defendant

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 3 October 2006)

[1] The plaintiff in this action claims damages for personal injuries suffered by the plaintiff in a motor vehicle rollover accident caused by the alleged negligent driving of the defendant on 6 September 2000 on the Plenty Highway in the Northern Territory.

[2] The defendant alleges that "the plaintiff was a resident of the Territory" as defined by s 4(1)(a)(ii) of the Motor Accidents (Compensation) Act (the Act) as the plaintiff had, on 16 June 2000, entered into a two-year contract of employment with the Arltarlpilta Community Government Council which required him to reside at the Atitjere Community in the Northern Territory for the duration of his employment.

[3] The plaintiff denies that he was a resident of the Territory at the relevant time. The burden of proving that the plaintiff falls within the definition of "resident of the Territory" rests upon the defendant: see *Darwin City Council v McDonnell and Ors* (1998) 8 NTLR 106 at 113.

[4] The parties have agreed that the Court should decide the question whether the plaintiff was a resident of the Territory within the meaning of s 4(1)(a)(ii) of the Act as at 6 September 2000 as a preliminary issue before the trial of the proceedings, pursuant to O 45.04 of the Supreme Court Rules, on the basis of agreed facts and documents to which I will now refer.

[5] On 15 June 2000, the plaintiff was telephoned by Mal Harvey of the Arltarlpilta Community Government Council and was offered employment as a Council Clerk at Arltarlpilta in the Northern Territory. At the time of the Council's offer of employment, the plaintiff was residing in the state of Queensland and was employed as the Executive Officer of Kalkadoon Aboriginal Sobriety House, which was located at Mount Isa, Queensland, in a permanent position on a full time basis.

[6] The plaintiff was provided with the Council's contract of employment, outlining the terms and conditions of his employment by facsimile on 15 June 2000. On 16 June 200 at Mount Isa in Queensland, the plaintiff accepted and signed the contract of employment and faxed a copy of it to the Council. The plaintiff then resigned from his employment with the Kalkadoon Aboriginal Sobriety House.

[7] On 18 June 2000, the plaintiff departed Mount Isa to travel to Arltarlpilta in the Northern Territory. He commenced his employment with the Council at Arltarlpilta on 19 June 2000.

[8] On 6 September 2000, the plaintiff was a passenger in a Subaru Forester motor vehicle which was registered in the Northern Territory, bearing registration number 579-505, when the vehicle rolled over. At the time of the roll over the vehicle was being driven by the defendant. The roll over occurred on a public road in the Northern Territory.

[9] At the time of the plaintiff's accident, he had not resided in the Territory for a continuous period of at least three months.

[10] The plaintiff's employment with the Council was terminated pursuant to the probationary period provisions of the contract of employment on 11 September 2000. Notice of termination was given to the plaintiff by letter from the President of Arltarlpilta Community Government Council dated 11 September 2000.

[11] The Territory Insurance Office is liable to indemnify the defendant to the extent of her liability for the plaintiff's damages pursuant to s 6 of the Act.

[12] The contract of employment provided in paragraph 4 for a period of probation in the following terms:

> "Your employment will be on a probationary basis for the three months following your commencement. The purpose of this probationary period is to allow the Council and yourself to assess

your suitability for the position. During this time your performance will be formally assessed on at least one occasion. Prior to the end of your probationary period your performance will be assessed again to determine if your probation will be extended to six months or if your employment will be continued according to this contract or terminated. On a decision being reached on each occasion by Council you will be advised in writing what that decision is.

While on probation your employment is temporary and may be terminated without compensation at any time during, or at the end of, your probationary period by either you or the Council giving two week's notice or payment in lieu of notice, or termination without notice, or payment in lieu of notice, for misconduct."

[13] Paragraph 2 of the contract of employment provides as follows:

"The term of your contract of employment shall be two years. Your commencement date is the beginning of ordinary business hours on 19 June 2000 while your contract of employment will cease at the close of ordinary business hours on 18 June 2002. This term is subject to a probationary period as set out in Clause 4 – Probation."

[14] Clause 10 of the contract also provides for termination and is in the following terms:

"Your contract of employment may be terminated before its expiry date as follows:

a) Termination by notice from the Council

The Council may terminate your employment by giving two weeks notice of the termination. The Council may choose to pay out this notice period rather than have you work out the notice. The period of notice required in this paragraph does not apply in the circumstances described in paragraph f) of this clause.

b) Termination by notice from you

You may terminate your employment by giving four weeks notice of the termination. Normally you would be required to work during this notice period but the Council may agree to an earlier release from your duties. The period of notice required in this paragraph does not apply in the circumstances described in paragraph f) of this clause."

[15] Paragraphs c), d) and e) deal with summary dismissal without notice, termination due to unsatisfactory performance and other reasons. Paragraph f) deals with probation in the following way:

"The Council or you may terminate this contract during or at the end of the probationary period described in Clause 4 of this contract by giving two week's notice."

[16] Section 5(1)(a) of the Act provides that an action for damages shall not lie in the Territory in the respect of the death of or injury to a person who at the time of the accident was a resident of the Territory.

[17] "Resident of the Territory" is defined by s 4 to mean:

"(a) in relation to an accident occurring in the Territory – a person who at the time of the accident –

(i) has resided in the Territory for a continuous period of three months;

(ii) has entered the Territory pursuant to a written direction of his employer, or a written agreement for his employment, that would require his services in the Territory for a period of not less than three months;

(iii) has, since entering the Territory, entered into a written agreement for his employment that would require his

services in the Territory for a period of not less than three months calculated from the date that he last entered the Territory before entering into the agreement; or

(iv) was residing in the Territory, or had entered the Territory to so reside, as the spouse or a dependant of a person referred into in sub-paragraph (i), (ii) or (iii);"

[18] The definition of "resident of the Territory" in its present form was introduced in 1984 and replaced an earlier definition which previously provided as follows:

> ""resident of the Territory" means –
>
> (a) in relation to an accident occurring in the Territory – a person who has resided in the Territory for a continuous period of six months or who has entered the Territory with the intention of so residing…"

[19] In the Minister's second reading speech in respect of the 1984 amending Act, the following explanation was given for the change to the definition of "resident of the Territory":

> "These amendments follow a section by section review conducted by the Treasury and the Territory Insurance Office. The amendments proposed are as follows. Firstly, they vary the definition of resident so that, to qualify for benefits, a person must have at least three months continuous residency in the Territory or a written contract of employment or be a dependant of such a person. The current definition states that the person must have six months residence or have entered the Territory with the intention of so residing. The question of intention has proved difficult to establish in the past and this amendment should clarify the situation and, by reducing the period from six to three months, should make it easier to prove residency."

[20] Counsel for the plaintiff, Mr Reeves QC, submitted that the definition had to be construed so as to promote the purpose or object underlying the Act: see s 62A of the Interpretation Act. Further, he submitted that a provision is to be construed in the context and purpose of the Act as a whole: see *Bropho v The State of Western Australia & Anor* (1990) 171 CLR 1 at 20; *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381-382 [69-70].

[21] It was submitted that the purpose of the Act was to abolish actions for common law damages arising from road accidents and to set up a no fault compensation scheme in lieu thereof (see *Buric v Transfield PBN Pty Ltd* (1992) 112 FLR 189 at 195) where residency was the crucial factor for determining to whom the Act applied and to whom it did not. I accept these submissions. Mr Reeves QC submitted that the purpose of the definition was to set a clear, certain and simple means of determining residency.

[22] As can be seen, the first part of the definition simply requires proof of residency in the Territory for a continuous period of three months. Sub-placita (ii) or (iii) apply only where, at the time of the accident, the injured person has not in fact resided in the Territory for a continuous period of three months. In both sub-placita (ii) and (iii) the qualifying nexus is the existence of a written direction or written agreement requiring the injured person's services in the Territory for a period of not less than three months. The fact that the direction or agreement must be in writing indicates that the

Legislature was concerned to have a degree of objective certainty about the term of the employment, a certainty which would be absent in the case of a provision allowing for a purely oral agreement.

[23] Mr Reeves QC submitted that the definition should be construed so as to favour simplicity and certainty. In *Buric v Transfield PBM Pty Ltd* (supra) at 195 I said, with reference to the word "continuous" in the definition:

> "I consider that the intention of the Legislature in using the word "continuous" has a number of purposes: (1) to exclude those who have established themselves as residents, but for less than three months; (2) to prevent those who left the Territory with the intention of no longer residing here, but who intend to reside here again, from aggregating the two periods of residence into a total of three months; (3) to provide some practical guidance by a three month period of continuous residence as a relatively simple criteria for establishing residence rather than for example, the former definition which also looked at the intention of a person at the moment he entered the Territory."

[24] In *R (on the application of Burkett and Anor) v Hammersmith and Fulham London Borough Council* [2002] 3 All ER 97 at 112 (46) Lord Steyne said:

> "… legal policy favours simplicity and certainty rather than complexity and uncertainty. In the interpretation of legislation this factor is a commonplace consideration. In choosing between competing constructions a court may presume, in the absence of contrary indications, that the legislature intended to legislate for a certain and predictable regime."

[25] That passage was recently approved by the New South Wales Court of Appeal in *BP Australia Ltd v Brown and Ors* (2003) 58 NSWLR 322 at 345-346.

[26] It is in the light of those considerations that the Court must arrive at the proper construction to be given to the words "would require his services in the Territory for a period not less than three months". It is to be noted that the Legislature did not use the expression "might require". If all that was intended to be achieved by the expression "would require" is that on an examination of the terms of the agreement there is a mere possibility that the injured person might be required to perform his services in the Territory for a period of not less than three months, I think the Legislature would have said so.

[27] Both counsel submitted that the word "would" is used in the conditional tense. I accept this submission. The postulate of the paragraph is that, at the time of the accident, the plaintiff has entered the Territory pursuant to a written agreement for his employment requiring his services in the Territory for a period not less than three months: *cf. The State of New South Wales v Taylor* [2001] 204 CLR 461 at 481 [63] per Kirby J. In this sense sub-placitum (ii) turns the clock back to consider the terms of the contract as they existed at the time when the person entered the Territory.

[28] There is also difficulty with the word "require" which may be used in a variety of senses depending upon the context: see *G C & E Nuthall (1917) Ltd v Entertainments & General Investment Corporation Ltd and Ors* [1947] 2 All ER 384 at 392 per Hallett J. It may mean, for example, 'to have need of' or 'to necessitate': see e.g. *Stock v Orcsik* [1977] VR 382 at 385. Or it may convey no more than a wish to have: will you require tea at four

o'clock? (*The Macquarie Dictionary*, 3rd ed, p 1808). The same dictionary gives a number of other possible meanings, all of which are imperative:

> "**1.** to have need of; need; *he requires medical care*. **2.** to call on authoritatively, order, or enjoin (a person, etc.) to do something: *to require an agent to account for money spent*. **3.** to ask for authoritatively or imperatively; demand. **4.** to impose need or occasion for; make necessary or indispensable; *the work required infinite patience*. **5.** to call for or exact as obligatory; *the law requires annual income-tax returns*. **6.** to place under an obligation or necessity. **7.** to wish to have: *will you require tea at four o'clock – verb (i)* **8.** to make demand; impose obligation or need: *to do as the law requires*. [ME, from L *requirere* search for, require]"

[29] The *Shorter Oxford Dictionary*, 3rd ed, p 1803 gives the following meanings:

> "**Require** (*rĭ*kw əiᵊ ɹ), *v*. late ME. [In xiv *requere, require* – OFr. *requer-, require-*, stem of *requere* (now refash. as *requérir*) :– Rom. **requærer*, for L. *requirere*, f. *re-* Re- + *quærere* seek, ask.] **I.** †**1.** *trans*. To ask (a person) a question; to inquire of (a person) *why, if*, etc. (*rare*) –1579. †**2.** To ask or request (a person) for something – 1583. †**3.** To ask, request, or desire (a person) to do something – 1641. **4.** To demand of (any one) *to do* something 1751.
>
> **3.** Defend vs mighty Lord wee thee r. 1584. **4.** The government required each county to find its quota of ships FREEMAN.
>
> **II. 1. a.** To ask for (some thing or person) authoritatively or imperatively, or as a right; to demand, claim, insist on having. late MR. **b.** To as for (something) as a favour; to beg, entreat, or request. Now *rare*. late ME. **c.** *intr*. To make request or demand. late ME. **2.** *trans*. To demand as necessary or essential on general principles, or in order to comply with some regulation. late ME. **b.** To call for or demand as appropriate or suitable in the particular case; to need for some end or purpose. late ME. **c.** To demand as a necessary help or aid; hence, to stand in need of; to need, want. late ME. **d.** *It requires*, there is need of 1820. **3.** *intr*. To be requisite or necessary. Now *rare*. 1500. **4.** To feel, or be under, a necessity *to* do something 1805. **b.** To fall necessarily, to need, *to be* done, etc. 1842.

> **1.** Oliver Cromwell. .requir'd, both of the Soldiers and others, the Oath of Fidelity 1720. **b.** They go commission'd to r. a peace DRYDEN. **2. b.** An acre of ground will r. ten pound of seed 1759. **c.** Light labour. .Just gave what life required, but gave no more GOLDSM. **4. b.** The wicked are miserable because they r. to be punished JOWETT.
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> †**III.** *trans*. To seek after, search for; to inquire after; to call upon, summon –1797."

[30] In my opinion, in the context of "a written agreement… that would require…", the word "require" means "to place under an obligation" i.e. is the plaintiff obliged by the terms of the contract to provide his services thereunder for a period of not less than three months? This is the same conclusion that I had arrived at in *Buric v Transfield PBM Pty Ltd* (1992) 112 FLR 189 at 194 where I said of the contract there in question "there is nothing to indicate that the plaintiff was bound to serve for at least three months under the contract".

[31] Mr Barr QC for the defendant submitted that the expression should be read as if words signifying continuance were inserted as follows:

> "… written agreement for his employment, that would <u>if it continued</u> require his services in the Territory for a period of not less than three months."

[32] In *Thompson v Goold & Co* [1910] AC 409 at 420, Lord Mersey said: "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do". Similarly, in *Marshall v Watson* (1972) 124 CLR 640 at 649, Stephen J said:

> "Granted that there may seem to be lacking in the legislation powers which it might be thought the Legislature would have done well to include, it is no power of the judicial function to fill gaps disclosed in legislation; as Lord Simonds said in *Magor and St Mellons RDC v Newport Corporation*, 'If the gap is disclosed, the remedy lies in an amending Act' and not in a "usurpation of the legislative function under the thin disguise of interpretation"."

[33] In *Wentworth Securities Ltd & Anor v Jones* [1980] AC 74 at 105-106, Lord Diplock said:

> "My Lords, I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction: even where this involves reading into the Act words which are not expressly included in it. *Kammins Ballrooms Co. Ltd. v Zenith Investments (Torquay) Ltd.* [1971] A.C. 850 provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved Parliament has their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed. Such an attempt crosses the boundary between construction and legislation. It becomes a usurpation of a function which under the constitution of this country is vested in the legislature to the exclusion of the courts."

[34] This approach has been adopted in Australia in a number of reported decisions: see the cases referred to by Spigelman CJ in *R v Young* (1999) 46 NSWLR 681 at 687 [10]; (1999) 107 A Crim R 1 at 5 [10]; and by Pearce

and Geddes, *Statutory Interpretation in Australia*, 6th ed, LexisNexis Butterworths, Sydney, 2006, para 2.29, pp 52-53.

[35] However, in *R v Young*, supra at 687, Spigelman CJ said:

> "11 The three conditions set out by Lord Diplock should not be misunderstood. His Lordship did not say, nor do I take any of their Honours who have adopted the passage to suggest, that whenever the three conditions are satisfied, a court is at liberty to supply the omission of the legislature. Rather, his Lordship was saying that in the absence of any one of the three conditions, the court cannot construe a statute with the effect that certain words appear in the statute.
>
> 12 As I understand the recent cases, they are not authority for the proposition that a court is entitled, upon satisfaction of the three conditions postulated by Lord Diplock, to perfect the Parliamentary intention by inserting words in a statute. The court may construe words in the statute to apply to a particular situation or to operate in a particular way, even if the words used would not, on a literal construction, so apply or operate. However, the words which actually appear in the statute must be reasonably open to such a construction. Construction must be text based.
>
> 13 The contemporary approach to construction is well described as 'literal in total context' (E Dreidger, *Construction of Statutes*, 2nd ed at 2): see, eg, *CIC Insurances Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 [69]. The courts no longer "make a fortress out of the dictionary": *Cabell v Markham* 148 F 2d 737 (1945) at 739, per Learned Hand J.
>
> 14 Putting to one side obvious typographical errors (see Bennion, *Statutory Interpretation*, 3rd ed (1997) Butterworths, London at 675-677), the court supplies words "omitted" by the draftsperson only in the sense that the words so included reflect in express, and therefore more readily observable, form, the true construction of the words actually used. In my opinion, the authorities do not warrant the court supplying words "omitted" by inadvertence per se.

> 15 Where the words actually used are not reasonably capable of being construed in the manner contended for, they will not be so construed: *McAlister v The Queen* (1990) 169 CLR 324 at 330; *R v Di Maria* (1996) 67 SASR 466 at 472-474. If a court can construe the words actually used by the Parliament to carry into effect the Parliamentary intention, it will do so notwithstanding that the specific construction is not the literal construction and even if it is a strained construction. The process of construction will, for example, sometimes cause the court to read down general words, or to give the words used an ambulatory operation. So long as the Court confines itself to the range of possible meanings or of operation of the text – using consequences to determine which meaning should be selected – then the process remains one of construction.
>
> 16 The construction reached in this way will often be more clearly expressed by way of the addition of words to the words actually used in the legislation. The references in the authorities to the court "supplying omitted words" should be understood as a means of expressing the court's conclusion with clarity, rather than as a description of the actual reasoning process which the court has conducted. In all cases, what the court has done is to construe the words actually used in their total context. When the authorities are so understood, the additional words proposed in the present case are plainly impermissible."

[36] As to the three conditions referred to by Lord Diplock, the purpose of the Act is clear enough; the main purpose is as I have set out in para [21] above. The second condition, whether the Legislature has, by inadvertence, omitted to deal with an eventuality which is required to be dealt with if the purposes of the Act are to be fulfilled, I do not consider has been established. The Legislature has broadened the scope of what might ordinarily be understood by the expression "resident of the Territory" by sub-placita (ii) and (iii) of the definition, but the Legislature did not, as it might have done, include contracts of employment subject to a probation clause or any contract of employment to be performed in the Territory irrespective of the term of the

contract, but that does not mean that these matters were inadvertently overlooked. As to the third condition, even if those matters were overlooked, I cannot say with certainty that the Legislature would have included the words suggested by Mr Barr QC. In fact, the words suggested by him would on one view include any contract of service even one which was only a contract from week to week, but which might extend for longer than three months. The missing words suggested by Mr Barr QC cannot therefore be supplied.

[37] Mr Barr QC submitted that on the true construction of the contract, this was a contract for two years, subject to the provisions of the contract dealing with the probation period. Consequently, it was submitted that the conditions of sub-placitum (ii) of the definition were fulfilled. In support of that submission I was referred to the decision of Angel J in *Hansen v Northern Land Council* (unreported, (1999) NTJ 1389; [1999] NTSC 69; BC9903841). In that case, the contract was held to incorporate a probationary period of six months. His Honour held on the facts of that case that the contract was for a fixed term of three years which included a six month probationary period. There does not appear to have been any provision in the contract there considered enabling either party to terminate the contract upon written notice. The circumstances of that case are quite different from the contract in this case.

[38] After I had reserved judgment, counsel drew my attention to the decision of von Doussa J in *Andersen v Umbakumba Community Council* (1994) 126

ALR 121. In that case, the question was whether the contact fell within Reg 30B(1)(a) of the Industrial Relations Regulations (Cth) which excluded from the operation of certain provisions of the Industrial Relations Act 1988 (Cth) "employees engaged under a contract of employment for a specified period of time". The provisions of the contract provided for a term of two years with an initial probationary period of three months. The contract provided that it may be terminated at any time by either party upon two weeks' notice. The decision in that case turned upon the meaning to be given to the word "specified". His Honour held that this required a period of time which had certainty about it, i.e. a contract for a fixed term and that a contract which was to run until some future event the timing of which is uncertain when the contract is made, is a contract for an indefinite period of time. At p 126 his Honour said:

> "In the present case cl 3 and Sch 1 of the employment agreement clearly state both a commencement date for the employment and a cessation date, but in light of the right on either party to the contract arising under cl 21(c) to bring the employment to an end on two weeks' notice, and the right of the employer under cl 21(d) to bring the employment to end without notice on payment of two weeks salary, the cessation date merely records the outer limit of a period beyond which the contract of employment will not run (unless a new agreement is entered into pursuant to cl 29). Within the period stated in Sch 1 the period of the contract of employment is indeterminate. At any point during the two year period identified by the commencement and cessation dates neither side could know with any certainty when the period of the contract of employment might come to an end."

[39] Those remarks apply equally to this case because either party could terminate the contract at any time merely by giving two weeks' written

notice. I therefore find that the contract in this case was for an indefinite period of time, and neither party could know with any certainty when the period of employment might come to an end. In those circumstances, it is clear that the written contract did not require the plaintiff's services for a period of not less then three months within the meaning of sub-placitum (ii) of the definition.

[40] Although it is not strictly necessary for me to decide this point, Mr Reeves QC submitted that, in deciding this question, I could look at what actually occurred after the plaintiff entered the Territory in the same way as the common law treats as certain a hypothetical future fact which has occurred by the time of the hearing. The submission was based upon the proposition that sub-placitum (ii) could be construed as involving a real likelihood or probability that the contract would require the relevant services for the relevant period rather than, as I have found, an actual contractual obligation, and it therefore follows that I have rejected this submission as well. However, I think the submission must also be rejected for the reason that, as I have held, the inquiry is as to the terms of the contract as they existed at the time of entry into the Territory, and it follows from that, that conduct which occurred after that time, is not relevant.

[41] I therefore determine the preliminary question as follows:

> At the time of his motor accident on 6 September 2000, the plaintiff was not a "resident of the Territory" as defined by the Motor Accidents (Compensation) Act.

[42] I will hear the parties as to any consequential orders and as to costs.
