

## ACT Law Reports – Launch

### ACT Supreme Court

Monday 30 June 2008

I begin by paying my respects to the Ngunnawal people, the traditional owners and continuing custodians of the land on which we gather.

It is customary for us to commence in this fashion, by acknowledging Canberra's traditional owners, and, in doing so we pay tribute to the history of this place. Similarly, it can be said that our purpose in gathering here this afternoon is to pay tribute to the history of these courts and to commemorate that history by recording its words in the ACT Law Reports.

Accurate record keeping has always been important to the legal tradition. In commenting on the importance of law journals his Honour Justice Kirby noted and I quote, "*The lesson of the common law, which speaks in the language of centuries, is that law is constantly in a process of evolution and change.*"<sup>1</sup> Similarly, in the forward to *Dowling's Select Cases*<sup>2</sup>, a publication of selected case notes prepared by James Dowling Esq between 1828 and 1844, Chief Justice Spigelman, AC noted that the cases in the volume manifested, and I quote:

*"...one abiding theme: the omnipresence of continuity and change...It is this, the unique combination of rigidity and flexibility, which has allowed the common law to endure."*<sup>3</sup>

Those of us who work closely with the law would attest to the accuracy of these observations.

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<sup>1</sup> The Hon. Justice Kirby (2002) 'Welcome to Law Reviews' 26(1) *Melbourne University Law Review*

<sup>2</sup> Full title, *Dowling's Select Cases 1828-1844: Decisions of the Supreme Court of NSW*

<sup>3</sup> Dowling's Select Cases 1828-1844: Decisions of the Supreme Court of NSW foreword *The Hon JJ Spigelman AC*

This process of evolution and change is, however, incidental, and as their Honour's have noted, relies on reflection of, and reference to, the reasons for decision given in past cases.

Our reliance on the doctrine of precedent to evolve law according to law requires that Judges and practitioners alike have the ability to access accurate records of past cases.<sup>4</sup> For this, the legal profession has come to rely on the publication of reasons for judicial decisions. As modern day law reports encompass both the *ratio decidendi* and the *obiter* of decisions, (and helpfully are in English) they effectively ensure that the law, as discovered here, is available to the public at large. While the public at large may not take up the invitation to devour these records as readily as those of us here today, the option, and now the opportunity to do so exists.

The preservation of precedent, and the consideration of the greater good as a rationale for the publication of judicial decisions goes back many years. Sir Edward Coke wrote on his notes of cases heard in the Court of Common Pleas and in the Privy Council,

*“ ..I never meant (as many have found) to keep them so secret for my own private use, as to deny the request of any friend to have either view or copy of any of them: so till late I never could be persuaded (as many can witness) to make them public, as by any entreaty to commit them to print: but...I have adventured to publish certain of their resolutions...for the help of their memory who heard them, and perfectly knew them, for the instruction of others who knew them not, but imperfectly heard them, and lastly, for the common good, (for that is my chief purpose) ...”*<sup>5</sup>

In the past, records of this court have been made available to the public. They were first published as part of the *Australian Law Reports* in 1961<sup>6</sup>. In addition, cases heard here have been reported in the *Federal Law Reports*<sup>7</sup> and specialised

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<sup>4</sup> ‘The Aim and form of law reports’ (1985) 59 *The Australian Law Journal* 616

<sup>5</sup> Sir Edward Coke (1600) *Part 1, Reports of 1600* as cited in ‘“To Provide Instruction, Learning and for the Common Good” An analysis of the Reasons given for Publishing Law Reports : Part 1’ 23 (2) *The law Librarian* 60

<sup>6</sup> *R v Kirovski* [1961] *Australian Law Reports* 82 (ACT Supreme Court, Joske J, 23 June 1960)

<sup>7</sup> *Allan Arthur Jones v David John Stephenson* (1990) 101 FLR 23

compilations such as the *Australian Criminal Law Reports*<sup>8</sup>, the *Australian & New Zealand Conveyancing Reports*<sup>9</sup> and the *Intellectual Property Reports*<sup>10</sup>. Decisions of this court are also available for public consumption through the ACT Supreme Court library and website. There is however something to be said for the form of authorised law reports.

Authorised reports aim to maintain certain standards and guarantee accuracy and completeness in the recording of cases. The argument for accuracy has been expounded since the sixteenth century when legal scholar and theorist Edmund Plowden stated that his reluctance to make his case records public was only (forcibly) overcome when he became aware of the circulation of ‘very corrupt’ copies of his works, as made by the unscrupulous clerks of his friends.<sup>11</sup>

Other authors have also been compelled to publish in this way. From this history the argument for accuracy of case recordings has gained further importance.

These reports will be the only series of law reports authorised by the ACT Supreme court, and the ACT Court of Appeal. They will aim to publish all significant decisions of the court in both hard copy and electronic form, and in doing so they will perpetuate the accurate preservation of precedent and will exist for the greater common good.

Any discussion of the new reports must acknowledge, as has already been stated, and I wish to emphasise the instrumental role of the late Justice Terry Connolly in getting ACT law reports up and running.

Justice Connolly’s involvement in the reports began with his attendance at a meeting of the Consultative Council of Australian Law Reporting. There he met Cameron Ford, the then editor of the Northern Territory Law Reports, and as you have heard

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<sup>8</sup> *R v Cooper* (2007) 175 A CrimR

<sup>9</sup> *Actionco Pty Limited v Pioneer Plasterboard Pty Limited* [2002] ANZ ConvR 532

<sup>10</sup> *M Hawke Nominees Pty Ltd v Commercial Dynamics Pty Ltd* (1995) 30 IPR 659

<sup>11</sup> *Les commentaires ou les reportes de Edmund Plowden* 1571 also known as *Quares del Monsieur Plowden* as cited in ‘“To Provide Instruction, Learning and for the Common Good” An analysis of the Reasons given for Publishing Law Reports : Part 1’ 23 (2) *The law Librarian* 60

now the editor of the ACT Law Reports. This meeting began the processes, which would establish the ACT law reports.

The success of the Northern Territory Law Reports is largely a credit to Cameron and his team and we are indebted to begin our own reports with him as the general editor. In addition to the support from Jason Monaghan and the editorial staff of Thompson Legal there will be an advisory panel made up from members of the ACT legal community. The board will comprise of Justice Refshauge, Bryan Meagher SC and Jayne Reece, and will set policy and provide advice to the general editor when and as required.

It is little known but a proposal for local ACT law reports was investigated some years ago by the ACT Law Society and the Bar jointly. Unfortunately nothing came of it until the present arrangements, which again can be attributed in large part to the enthusiasm and efforts of the late Justice Connolly and the ACT bar.

I remind you that this, the first volume of The ACT Law Reports, is dedicated to the Honourable Justice Terry Connolly, gifted judicial officer and friend of the court, and we are delighted that Dr Helen Watchirs can be a part of this today.